

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*,) June 28, 2017
)
Debtors.)

In Re:)
)
The Financial Oversight and) Docket No. 3:17-BK-3566 (LTS)
Management Board for)
Puerto Rico,) (Joint Administration
) Requested)
as representative of)
)
Employees Retirement)
System of the Government)
of the Commonwealth of)
Puerto Rico,)
)
Debtor.)

In Re:)
)
The Financial Oversight and) Docket No. 3:17-BK-3567 (LTS)
Management Board for)
Puerto Rico,) (Joint Administration
) Requested)
as representative of)
)
Puerto Rico Highways and)
Transportation Authority,)
)
Debtor.)

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OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE.

PRESENT IN THE OMNIBUS HEARING:

The Honorable U.S. Chief Bankruptcy Judge Barbara Houser

The Honorable U.S. Magistrate Judge Judith Dein

APPEARANCES:

For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For The Commonwealth of Puerto Rico, et al.:	Mr. Steven Weise, PHV Mr. Martin Bienenstock, PHV Mr. Paul Possinger, PHV Mr. Timothy Mungovan, PHV
For AFSCME:	Ms. Sharon Levine, PHV
For Peaje Investment, LLC:	Mr. Allan S. Brilliant, PHV
For Stericycle of Puerto Rico:	Mr. Adrian Linares Palacios, Esq.
For Ad Hoc Group of General Obligation Bondholders:	Mr. Andrew N. Rosenberg, PHV Mr. Walter Reiman, PHV
For Glendon Opportunities, et al.,	Mr. Bruce Bennett, PHV

1 APPEARANCES, Continued:

2 For Ambac Assurance
Corporation: Mr. Dennis F. Dunne, PHV

3

4 For Assured Guaranty
Corp.: Ms. Ellen M. Halstead, PHV

5 For Puerto Rico AAA
Portfolio Bond

6 Fund II, Inc., et al.: Mr. Jason N. Zakia, PHV

7 For Puerto Rico Fiscal
Agency and Financial

8 Advisory Authority: Mr. John Rapisardi, PHV
Ms. Suzanne Uhland, PHV

9 Mr. Peter Friedman, PHV

10 For Official Committee
of Unsecured Creditors: Mr. Luc Despins, PHV

11

12 For Financial Guaranty
Insurance Company: Mr. Martin Sosland, PHV

13 For Interamericas
Turnkey Co., Inc.: Mr. Maximiliano Trujillo, Esq.

14

15 For United Auto Workers
International Union
and Service Employees

16 International: Mr. Peter DeChiara, Esq.

17 For Mutual Fund Group: Mr. Philip Bentley, PHV
Mr. Thomas Moers Mayer, PHV

18

19 For Ad Hoc Retiree
Committee: Mr. Robert Gordon, PHV

20 For Canyon Balanced
Master Fund Ltd.,

21 et al.: Mr. Susheel Kirpalani, PHV

22 For National Guaranty: Mr. Jonathan Polkes, PHV

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24 Proceedings recorded by stenography. Transcript produced by
CAT.

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1	I N D E X	
2	WITNESSES:	PAGE
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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1 San Juan, Puerto Rico

2 June 28, 2017

3 At or about 9:30 AM

4 * * *

5 THE COURT: Good morning to the parties at interest,
6 attorneys, members of the public, and press gathered here in
7 the court.

8 Oh, I think we may have lost a phone line. Can
9 someone check?

10 COURTROOM DEPUTY: 17C just lost --

11 THE COURT: Bear with me a moment so we can make sure
12 we are up.

13 Can you hear me in New York?

14 Again, everyone, I'm just grateful for your patience
15 for a few minutes while we work out the technical difficulty.
16 We'll just be a little while longer.

17 Thank you all for your patience. We can continue
18 now. There. Now my microphone's working, too.

19 So once again, good morning to parties of interest,
20 attorneys, members of the public and press gathered here and
21 in New York, as well as those listening on the phone for this
22 second Omnibus hearing in these PROMESA Title III cases.

23 I thank the parties and their attorneys for their
24 candid and thoughtful submissions in advance of this hearing.

25 The litigation process and the progress in these

1 matters over the past few weeks has been rapid, and my staff
2 and I will continue to attend diligently to the issues that
3 are presented.

4 We have been joined by Magistrate Judge Judith Dein
5 of the District of Massachusetts who will be overseeing
6 aspects of these cases and related adversary proceedings
7 pursuant to referrals that I will enter from time to time.

8 The ability to partner with Judge Dein will help to
9 ensure prompt and appropriate attention to the many issues
10 that arise in the course of these proceedings. And I will
11 introduce Judge Dein to you shortly.

12 I was gratified by the positive reception of my
13 appointment of the mediation team of distinguished judges. I
14 am hopeful that their involvement will help to put
15 negotiations on a more productive track, and I am pleased that
16 I will be able to introduce chief bankruptcy Judge Barbara
17 Houser, the leader of the mediation team, to you in a few
18 minutes.

19 Before turning to these introductions, I will take a
20 moment to address a disclosure issue that has arisen as the
21 number of participants and lawyers involved in these
22 proceedings continues to grow.

23 I understand that Debevoise and Plimpton, LLP, which
24 I refer to as Debevoise, attorneys filed pro hoc vice
25 applications yesterday indicating that they represent Syncora

1 Guarantee, Inc. and Syncora Capital Assurance, Inc., which
2 I'll refer to collectively as Syncora, in connection with
3 these Title III cases.

4 One of my law clerks was formerly employed at
5 Debevoise. His clerkship term ends in September, at which
6 time he may or may not return to Debevoise. At this time he
7 does not have a formal offer from the firm, nor has he
8 formally committed to return to the firm. In what may be an
9 abundance of caution, he will be screened from working on any
10 aspect of these Title III cases in which Debevoise's client,
11 Syncora, is directly involved.

12 By way of further disclosure, I, myself, was with
13 Debevoise until I left the firm to join the federal bench over
14 20 years ago. I no longer have any financial ties to the
15 firm.

16 My other two law clerks working on these Title III
17 cases were also formerly with large law firms prior to
18 beginning their clerkships. One was with Stroock, Stroock &
19 Lavan, LLP. The other was with Otterbourg, PC. That
20 individual who was with Otterbourg was employed at Proskauer
21 Rose, LLP five years ago. At no time did any of my clerks
22 work on matters related to these Title III cases.

23 Notwithstanding the precautionary screening of my law
24 clerk from Debevoise, none of these former or possible future
25 relationships, in my view, impedes the ability of me or my law

1 clerks to be impartial or independent in any of our work on
2 any aspect of these cases.

3 If you disagree, any objections to the continuation
4 of the service of my law clerks and myself in these cases
5 should be made in writing and sent directly to the Clerk of
6 the Court for the District of Puerto Rico and not filed on the
7 docket. I will file a written notice to this effect,
8 including the deadline and the procedures on the docket soon.

9 Now we'll turn to the items on the status portion of
10 the agenda. I note in this connection that there are two
11 additions since the agenda was filed. I've granted the
12 request of the Office of the United States Trustee to be heard
13 regarding interim compensation and fee procedures.

14 We will also hear from the representative of the
15 recently constituted unsecured creditors committee. Both sets
16 of remarks I expect will be brief.

17 I now invite Chief Judge Barbara Houser of the United
18 States Bankruptcy Court for the Northern District of Texas to
19 the bench to say a few words for you. Judge Houser is a
20 distinguished jurist and leader in the insolvency field and
21 among her fellow federal judges.

22 Her impressive biography is attached to the Order
23 preliminarily appointing the mediation team which is filed on
24 the dockets of the Title III cases posted on the PROMESA area
25 of the Court's website. We are fortunate that she has agreed

1 to lend her considerable talents to the leadership of the
2 extraordinary team of judges who have agreed to work with you
3 and with each other to facilitate negotiated resolutions of
4 the unprecedented issues facing Puerto Rico, her creditors and
5 her people.

6 Judge Houser.

7 THE HONORABLE U.S. CHIEF BANKRUPTCY JUDGE HOUSER:

8 Thank you, Judge Swain, and good morning. There is
9 much I want to say today to the people of Puerto Rico and also
10 the parties of interest about the mediation process that we
11 are implementing here and why we are implementing it. I will
12 start with two preliminary points and then answer three
13 specific questions.

14 First, for those of you who may not be familiar with
15 mediation, it has many advantages to litigation. Mediations
16 are negotiated solutions to matters that are in dispute. They
17 are less formal than court proceedings and they save time and
18 money.

19 While not all mediations result in a successful
20 resolution of all matters in dispute, when parties decide to
21 pursue mediation and participate in that mediation process in
22 good faith, common ground is often identified.

23 The mediation team's goal here is simple: We will
24 assist the parties in finding solutions to the extraordinarily
25 complex issues Puerto Rico and they face. Each member of the

1 mediation team is committed to this goal, and we are
2 optimistic that significant progress can be achieved if
3 everyone comes to the mediation process with a similar goal
4 and acts with us and each other in good faith.

5 Second, I think it is important that the people of
6 Puerto Rico, and all parties in interest in these cases know
7 that the federal judiciary is committed to the successful
8 resolution of these Title III cases as expeditiously as
9 possible, and to that end, has committed the talents and
10 expertise of five distinguished sitting federal judges from
11 across the United States to mediate disputes in these cases.

12 Members of the mediation team were designated to
13 serve in Puerto Rico through the intercircuit assignment
14 procedure of the judicial conference of the United States, the
15 national policy-making body for the federal court system. And
16 each team member has specific and relevant experience that
17 makes him or her uniquely qualified to serve here.

18 Our tenure on the federal bench spans from 17 to 29
19 years. We have mediated hundreds of cases; headed bankruptcy
20 and mediation practices at nationally known law firms; taught
21 alternative dispute resolution, litigation, bankruptcy, and
22 other courses at top law schools; and have been recognized by
23 various organizations and respected professional groups for an
24 assortment of achievements. We are here to serve the people
25 of Puerto Rico and you as best we are able.

1 In speaking with you today, I will answer three
2 specific questions: First, why is a mediated resolution of
3 these cases preferable; second, why were these particular five
4 judges selected to be members of the mediation team; and
5 third, how will the mediation process in these cases work.

6 Returning to the first case, why is a mediated
7 solution preferable? A mediated resolution of the many
8 complex novel issues presented in these Title III cases is
9 ideal because a negotiated resolution can save the parties a
10 significant amount of time and money and eliminate much of the
11 uncertainty associated with litigating issues of first
12 impression under PROMESA.

13 These cases have already presented novel, complex
14 legal and factual issues to Judge Swain for resolution. And,
15 of course, these cases are in their infancy, with many more
16 interesting, complex issues inevitable, and perhaps other
17 cases with equally challenging issues to be filed.

18 Many of these legal issues either are or will likely
19 be a first impression as PROMESA is a new statute enacted to
20 address the financial crisis Puerto Rico faces. The novelty
21 of the issues and the fact that many of them have never before
22 been considered by a trial court, let alone an appellate
23 court, will add to the length of time that will be required to
24 litigate these issues to a final judgment Order.

25 Huge insolvency cases like these are always

1 expensive. The administration of these Title III cases will
2 be no exception. And the longer the case is pend -- no one's
3 ever had a problem hearing me before so --

4 THE COURT: The other rooms are having a little
5 difficulty hearing us, so we've been asked to speak quite
6 directly into the microphone.

7 THE HONORABLE U.S. CHIEF BANKRUPTCY JUDGE HOUSER:
8 All right. I'll do that. Thank you, Judge Swain. Again, this
9 is a first, at least for me, about not being heard.

10 As I was saying, the longer these cases pend, the
11 more expensive they will be. A consensual resolution or a
12 substantially consensual resolution of the complex, novel
13 issues presented here should shorten the time the debtors
14 spend in their respective Title III cases, which should, in
15 turn, reduce the expense attendant to the cases. And, of
16 course, the lower the cost of administration of these cases,
17 the more value that will be available to distribute to
18 creditors and other parties entitled to distribution under a
19 plan or plans of arrangement.

20 Moreover, a negotiated resolution of the complex
21 issues that have arisen or will arise in these cases and
22 related proceedings will eliminate the uncertainty associated
23 with that litigation. Judge Swain's decision on contested
24 matters and in adversary proceedings will be but the first
25 step in a time-consuming appellate process, first to the Court

1 of Appeals for the First Circuit and then perhaps to the
2 United States Supreme Court.

3 The outcome of litigation and any attendant appeal is
4 always uncertain and risky for the parties and, of course, a
5 negotiated resolution will eliminate this uncertainty and
6 risk.

7 Given these obvious benefits of a consensual or a
8 substantially consensual resolution of these cases to the
9 people of Puerto Rico and all other parties of interest, it
10 makes perfect sense that a team of distinguished sitting
11 federal judges should be appointed to assist the parties in
12 their efforts to negotiate a consensual resolution here, if at
13 all possible, which brings me to why these five judges were
14 selected.

15 The short answer is that each is uniquely qualified
16 to serve as a member of the mediation team, as I will briefly
17 highlight. Judge Tom Ambro is on the Third Circuit Court of
18 Appeals. Judge Ambro was an insolvency lawyer before he took
19 the bench and is one of the most well-respected circuit judges
20 in the United States. The opinions he has authored in the
21 insolvency area are always thoughtful and well reasoned.

22 Moreover, Judge Ambro is held in high regard by both
23 his peers and by the lawyers who argue cases on appeal to him.
24 In fact, just this past March, Judge Ambro received the
25 distinguished service award from the American College of

1 Bankruptcy Lawyers, which is the highest award that
2 organization bestows upon a person who has contributed
3 mightily to the betterment of the bankruptcy system.

4 Judge Nancy Atlas is a senior district judge from the
5 Southern District of Texas and just happens to be one of my
6 former law partners in our prior lives. Before taking the
7 bench, Judge Atlas and I practiced law at a firm nationally
8 known for its insolvency expertise.

9 While at the firm, Judge Atlas was an accomplished
10 litigator and mediator. She is now a highly-respected jurist
11 and has tried many cases involving complex financial
12 structures such as those presented here. Given her extensive
13 mediation practice before taking the bench, she is the most
14 experienced mediator on my team.

15 Judge Victor Marrero is a senior district judge from
16 the Southern District of New York. Judge Marrero is Puerto
17 Rican and brings a deep knowledge of Puerto Rico to our team.

18 Moreover, Judge Marrero brings significant knowledge
19 of the innerworkings of federal, state and city governmental
20 units from, among other things, his prejudgeship experiences
21 as assistant to the mayor of New York City, as the executive
22 director to the Department of City Planning of New York City,
23 as special counsel to the comptroller of New York City, as the
24 first assistant counsel to the governor of the State of New
25 York, and as undersecretary of the Department of Housing and

1 Urban Development.

2 These experiences give Judge Marrero unique insight
3 into the challenges being faced by the various governmental
4 entities of Puerto Rico.

5 Judge Chris Klein is one of my bankruptcy judge
6 colleagues from the Eastern District of California. He's a
7 very experienced bankruptcy judge, having been appointed to
8 the bench in 1988.

9 As relevant here, Judge Klein presided over the City
10 of Stockton bankruptcy case under Chapter Nine of the
11 Bankruptcy Code, which gives him a unique insight into many of
12 the issues that we will face in these Title III cases.

13 Finally, let me explain what our mediation process
14 will look like. First, and perhaps most important, our
15 mediation process will be confidential on all sides. This
16 will allow parties to have open and frank conversations with
17 the mediators and each other.

18 Parties must be free to speak to the mediators and
19 each other without fear that what is said will be reported in
20 the press, posted online, or used against them in a hearing
21 before Judge Swain.

22 Second, parties who wish to participate in our
23 mediation process must agree to participate in good faith.
24 This will help ensure that the mediators and other parties who
25 have also agreed to participate in the process in good faith

1 are not wasting their time.

2 Only through each party agreeing to participate in
3 good faith can the mediators and all other parties be assured
4 that the dialogue that will occur among the parties in
5 mediation will be open, candid and hopefully productive.

6 Third, our mediation process will require that
7 throughout clients be present at each mediation session.
8 Having clients present at all mediation sessions is
9 extraordinarily important so that parties with a financial
10 stake in the outcome can be heard, and equally importantly,
11 can hear from other parties and the mediators regarding the
12 issues being addressed in mediation.

13 Finally, our mediation process will be voluntary so
14 that parties can choose to participate or not participate as
15 they determine to be in their respective best interest. Our
16 core of voluntariness is that the mediators will not attempt
17 to force the parties to accept a resolution that they do not
18 find acceptable.

19 Parties with a financial stake in the outcome of the
20 issues being addressed in mediation are in the best position
21 to determine if a proposed resolution is in their respective
22 best interest. If it is, presumably they will agree. If it
23 isn't, they must be free to pursue another alternative,
24 including litigation, if they believe that alternative is
25 truly better for them.

1 Just a few additional points about our mediation
2 process before I conclude. Our mediation process will be both
3 facilitative and evaluative. A facilitated mediation process
4 is one in which the mediator facilitates the parties' ideas
5 for how the issues being presented in mediation can be
6 resolved.

7 An evaluative mediation process is one in which the
8 mediator evaluates the position being taken by the parties in
9 hope of assisting them to understand both the strengths and
10 weaknesses of their respective positions.

11 By combining both processes here, I believe we
12 enhance the prospects for a consensual or substantially
13 consensual resolution of these cases. Because our mediation
14 process will be both facilitative and evaluative, I believe
15 sitting federal judges are ideal mediators.

16 Having an experienced sitting federal judge serve as
17 a mediator can help the parties and their respective
18 professionals understand why a litigated solution may not be
19 in their respective interests.

20 In short, an experienced judge mediator can help a
21 party understand how that judge evaluates that party's legal
22 position. Of course, no member of my mediation team can speak
23 for Judge Swain. She will be the judge who will rule on
24 disputed issues if our mediation process is unsuccessful.

25 Moreover, no member of my mediation team will speak

1 to Judge Swain about any substantive issue that is being
2 addressed in mediation, nor will we have any insight into her
3 analysis of those issues. But as experienced judges
4 ourselves, we are particularly well suited to provide the
5 parties with our insights into how we would rule on the issues
6 being mediated if we were the judge who could rule on those
7 issues. Hopefully those insights will be useful to the
8 parties and may facilitate a consensual or substantially
9 consensual resolution of those issues.

10 Next, I want to give notice of the first formal
11 mediation meeting in these cases. So lawyers, sharpen your
12 pencils.

13 Parties who have been actively participating in these
14 cases to date by filing motions or adversary proceedings, or
15 by opposing motions filed by other parties, must attend a
16 meeting with me and two other members of the mediation team on
17 July 12 in New York City. This meeting will be held in the
18 ceremonial courtroom at the Federal District Courthouse
19 starting at 9:30 AM.

20 The office of the United States Trustee has appointed
21 two official committees in these cases, and committee counsel
22 must also attend this first meeting. Other parties at
23 interest in the cases who wish to attend this meeting may
24 request the opportunity to do so by following the procedures
25 that will be explained further in a notice and Order entered

1 by me in these cases later this week.

2 I will review your request and attempt to accommodate
3 as many of them as possible. To the extent you request the
4 opportunity to attend, but I cannot accommodate your request,
5 please be assured that other opportunities to meet with me or
6 other members of the mediation team will be provided to you,
7 as we truly want to understand the position of all parties in
8 interest in these cases. For those of you required to attend,
9 please do mark your calendars with this date and time.

10 Finally, in closing, while much of the mediation
11 team's work in these cases must be done behind the scenes and
12 out of the public's eye, and thus will not be readily visible,
13 I ask all involved or affected by these cases to trust me when
14 I tell you that members of my mediation team and I will work
15 tirelessly to assist you in finding consensual solutions or
16 substantially consensual resolutions of the many complex
17 issues Puerto Rico and you face so that plans of adjustment
18 can be confirmed for the debtors.

19 This is a challenging task that will require the
20 cooperation, ingenuity and diligence of all involved. I know
21 I speak for my entire mediation team in saying that serving as
22 judge mediators in these cases is an honor and responsibility
23 that we shoulder with great dedication and determination. We
24 look forward to beginning our work in these cases.

25 Thank you, Judge Swain.

1 THE COURT: Thank you, Judge Houser.

2 A number of requests were filed by attorneys wishing
3 to speak regarding the mediation team, but since our agenda
4 today is full and the mediation status item was included
5 simply for the introduction of Judge Houser and her statements
6 about the organizational plans of the team, I do not plan to
7 call on individuals to make remarks at this time unless
8 someone rises now and indicates that their issue is urgent.

9 Is there anyone who wishes to make such an urgent
10 statement regarding the mediation process?

11 Sir, please come to the podium.

12 MR. DESPINS: Good morning, Your Honor. My name is
13 Luc Despins. I'm sorry. My local counsel should introduce
14 me.

15 THE COURT: Good morning.

16 MR. O'NEILL: Good morning, Your Honor, distinguished
17 colleagues, judges. Patrick O'Neill as local counsel for the
18 Committee of Unsecured Creditors.

19 THE COURT: Good morning.

20 MR. DESPINS: So, Your Honor, we absolutely have no
21 concerns with respect to the mediation process except for one
22 issue, which is an issue that I wanted to address with respect
23 to other matters in the case as mentioned in the motion we
24 filed yesterday with the Court, and that is the issue of
25 timing.

1 As you know, we were appointed -- we were just
2 retained two days ago. The parties in this case have been at
3 this for, in some cases, years, and in other cases, months.
4 And if the July 12 first meeting is intended to be substantive
5 in terms of presenting position statements and all that, there
6 is -- it would be very hard for the committee to participate
7 in that short time frame.

8 THE COURT: I think I can speak for Judge Houser
9 here, and she'll signal me if I've got this wrong, but the
10 July 12 meeting is an organizational meeting. It is not
11 anticipated to be one that involves substantive discussions.
12 And indeed, the schedule for making mediation submissions will
13 be -- and the content of such submissions will be the
14 principal subject of that meeting.

15 MR. DESPINS: Thank you. So later on in the hearing
16 at a time that you'll determine, I'd like to be heard on
17 general relief from deadlines pending in the case, but that
18 deals with our issue in mediation, Your Honor. Thank you.

19 THE COURT: Thank you.

20 And now I invite Magistrate Judge Judith Dein to say
21 a few words and introduce herself to you.

22 Judge Dein is a very distinguished and well-respected
23 jurist who practiced commercial litigation before taking the
24 bench, and served on the prominent Federal Court in Boston for
25 many years, overseeing management of litigation and discovery

1 | disputes among a wide range of judicial duties.

2 | It is fortunate that since PROMESA requires oversight
3 | by a federal district judge, the federal statute that permits
4 | district judges to partner with magistrate judges for
5 | referring issues and areas of case management responsibility
6 | to magistrate judges applies here, so that Judge Dein and I
7 | will be able to work together as needed on pretrial matters
8 | that arise in these cases and adversary proceedings.

9 | Judge Dein's impressive biography is included in the
10 | notice of appointment that is posted on the docket and in the
11 | PROMESA section of the Court website.

12 | Judge Dein.

13 | THE HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN:
14 | No one has ever said they couldn't hear me either.

15 | Thank you, Judge Swain.

16 | Thank you everyone. Those listening in as well.

17 | I know for many of you this may be the first time
18 | that you are working with a magistrate judge. Just chalk that
19 | up to one of the first times of a lot of things that are
20 | happening in this litigation.

21 | And my bio, as Judge Swain has said, is posted on the
22 | website. I hate being old enough to have a bio, but after 20
23 | years in private practice, I was appointed to the bench in
24 | 2000. Since then, I've been reappointed twice as a magistrate
25 | judge.

1 I have extensive experience handling all types of
2 case management and pretrial matters, including complex
3 discovery matters. My caseload includes referrals from both
4 the district judges as well as a docket of my own.

5 I am very much looking forward to assisting Judge
6 Swain, handling the matters referred to me, and helping move
7 these matters along as expeditiously and fairly as possible.

8 I gather we're supposed to introduce ourselves, so
9 I'd like to tell you a little bit about my personal style.
10 Well, very little. Several years ago, Mass Lawyers Weekly
11 solicited input from the Bar who had tried cases in front of
12 various judges to give an evaluation. I had just finished a
13 month long -- presiding over a month-long securities fraud
14 case and counsel felt the need to write in. They did write
15 that it was a very positive experience, but they also wrote in
16 language which I have hanging on my wall.

17 Judge Dein, quote, has no particular quirks or
18 foibles that counsel appearing before her should consider.

19 I have no idea how to translate quirks or foibles
20 into Spanish, and I leave that to you. And I'm curious as to
21 whether you will all agree when this matter is over. My
22 family does not. But I personally do not think of myself as
23 having quirks or foibles. But anyway, what you see is what
24 you get.

25 You have my dedication, and you have my full-time

1 commitment. And I am very much looking forward to working
2 with Judge Swain and all of you for an expeditious and fair
3 resolution of these historic matters. Thank you.

4 THE COURT: Thank you, Judge Dein.

5 I now invite counsel for the Oversight Board to come
6 to the podium to speak to the current status of the bank
7 authority motion which remains under advisement pending the
8 anticipated submission of the consent order.

9 MR. BIENENSTOCK: Thank you, Your Honor. Martin
10 Bienenstock with Proskauer Rose, LLP, for the Oversight
11 Board.

12 THE COURT: Good morning, Mr. Bienenstock.

13 MR. BIENENSTOCK: Good morning. The bottom line is
14 that after the last hearing, we circulated a proposal that we
15 thought would garner the support of all the parties who spoke
16 up at the last hearing. It had a lot of support, but not
17 unanimous support.

18 Since then, the passage of time has caused us to
19 believe that we can ask the Court to let us withdraw the
20 motion without prejudice. If the need arises, we might come
21 back to Your Honor with a slightly different bank motion, but
22 for now, with the Court's permission, we'd like to withdraw it
23 without prejudice.

24 And we've consulted with the Commonwealth about this
25 obviously before making the suggestion.

1 THE COURT: And so will you file a motion to withdraw
2 or do you want me to rule now on the record and enter an Order
3 terminating that motion without prejudice?

4 MR. BIENENSTOCK: Preferably the latter, Your Honor.
5 I don't think parties would object. If they do, we can file a
6 motion.

7 THE COURT: I see no hands indicating an objection to
8 this oral motion, and so the motion to withdraw the bank
9 authority motion without prejudice is granted and an Order
10 linking it with the appropriate docket numbers will be
11 entered.

12 MR. BIENENSTOCK: Thank you, Your Honor. And if I
13 might just insert one tidbit of positive news. Two items on
14 the second agenda in the contested column have moved to the
15 uncontested column, those being the joint admin motion and the
16 stay motion.

17 THE COURT: Thank you. That is very good news
18 indeed.

19 MR. BIENENSTOCK: Thank you, Your Honor.

20 THE COURT: All right. And so now I would invite the
21 representative of the United States Trustee to come to the
22 podium who requested to speak about interim compensation and
23 fee procedures.

24 Ms. Lecaroz.

25 U.S. TRUSTEE LECAROZ ARRIBAS: Good morning, Your

1 Honor, Judges. May it please, the Court.

2 Monsita Lecaroz Arribas, Assistant U.S. Trustee on
3 behalf of Guy Gebhardt, Acting U.S. Trustee for Region 21.
4 With me is Sean Cowley, an attorney with our Detroit office.

5 Since the hearing on May 17, the United States
6 Trustee has worked with counsel for the Oversight Board to
7 develop an appropriate procedures order for these proceedings,
8 including the appointment of an independent fee examiner.

9 We have reached an agreement in principle on the
10 terms of such an order, and drafts have been exchanged for
11 comment. We anticipate that a consensual fee procedures order
12 will be filed for consideration by the Court no later than the
13 next omnibus hearing date.

14 THE COURT: I'm sorry, ma'am. May I ask you to speak
15 a little bit slower so that we can be sure we get everything
16 down accurately? Thank you.

17 U.S. TRUSTEE LECAROZ ARRIBAS: I'm sorry, Your Honor.
18 Do you need me to repeat?

19 THE COURT: No, just go forward a bit more slowly.

20 U.S. TRUSTEE LECAROZ ARRIBAS: I'm done, Your Honor.
21 Thank you.

22 THE COURT: All right. Then thank you for the
23 submission.

24 And so now I recall the representative of the
25 Unsecured Creditors Committee. Is this when you wanted to

1 speak to your issue or do you want to wait?

2 MR. DESPINS: If we could, Your Honor, we will do it
3 now.

4 THE COURT: Very well.

5 MR. DESPINS: Your Honor, again, for the record, Luc
6 Despins for Paul Hastings, counsel for the Unsecured Creditors
7 Committee.

8 THE COURT: And you need to talk slower also. Thank
9 you.

10 MR. DESPINS: That is not the first time I've heard
11 that.

12 Your Honor, I think -- and the people who know me
13 know that generally I'm a man of few words. And in this case,
14 I would ask the Court for your indulgence this morning. I'll
15 try to be brief, but there are some key points that need to be
16 made.

17 First, we want to thank the Court for allowing us to
18 be here today and be heard on the various motions, despite the
19 fact the deadlines we have had passed on the responsive
20 pleadings.

21 In the motion we filed, however, we had said we
22 wanted prospective relief in the various deadlines that are
23 coming in the case, and we are in discussions with parties in
24 the case. And we had left this part of the --

25 THE COURT: May I interrupt you for a moment?

1 As you know, I crossed out that part of your Order.
2 I did that because it wasn't clear to me at that time what
3 deadlines you had in mind and what particular matters you
4 might want to try to become involved in. So I thought it best
5 to take it up in context, which is apparently what you're
6 trying to do.

7 MR. DESPINS: Correct. And I'm glad you crossed it
8 out for that reason.

9 And Your Honor, basically, I want to address the
10 Court, before we get into the exact relief we're seeking, to
11 give you a bit of background on the committee. The committee
12 is a very diverse committee with trade creditors, with an
13 entity that is owed millions of dollars for tax refunds that
14 were not paid, labor unions, et cetera, et cetera. It's a
15 very broad group.

16 But more importantly, it is a committee that is a
17 fiduciary for all unsecured creditors, and that means the GO
18 bonds as well, Your Honor, and in particular the thousands of
19 creditors on the island that hold those bonds. And that's a
20 very important part. I mean by that the retail holders. And
21 that's a very important point.

22 Even though they're not on our committee, we owe them
23 a fiduciary duty as we owe other creditors. And the reason
24 I'm focusing on this unrepresented creditor group, Your Honor,
25 is because this case is like no other. If we're dealing with

1 a private company, Chapter 11, generally it should have
2 complete discretion -- I shouldn't say complete discretion,
3 but it's their money. We don't care.

4 In this case, however, the people who are actually
5 creditors also live on the island. Everything has an impact
6 on them. And that's why it's a critical point here.

7 The process, we all know, needs to be fair, but needs
8 to be perceived to be fair by those people. And this is where
9 the committee comes in. We need a meaningful apportionment to
10 be heard. And that means, in some cases, more time. And I
11 will get to exact relief in a second.

12 And I know Your Honor's reaction initially may be,
13 well, join the club. I was just appointed to this case a
14 month and a half ago, and I'm in the same boat you are, except
15 you have hundreds of lawyers and I only have three clerks --
16 or two clerks. And I would understand that, except that in
17 our case we have different roles.

18 And one of the roles that -- and I'm not saying that
19 our rules are more important. Clearly the crucial role here
20 is that of the Court. But the committee has a communication
21 role on the island that is critical here, and we cannot
22 accomplish that role unless we have some time to analyze the
23 issues and communicate with these creditors. And that means
24 also our financial advisor, which was retained yesterday, Saul
25 Cooper.

1 And I know that in this case, you probably have the
2 best firms in the world, but as I said initially, these firms
3 have been in this some cases for a year, year and a half.
4 Even the retiree committee counsel was involved from before
5 the case. So we are at a distinct disadvantage here and, you
6 know, it's very important.

7 And let me point out one issue in particular, which
8 is the issue of the fiscal plan. Your Honor has probably seen
9 through the pleadings that this has become sort of a holy war
10 for some creditors describing the fiscal plan as an illegal
11 fiscal plan, et cetera, et cetera.

12 The committee's view on the fiscal plan is, I would
13 say, key. And I'm not promising this, I don't want
14 Mr. Bienenstock to get too excited, but if the committee
15 concluded that the fiscal plan was appropriate, I think it
16 would be a very important data point.

17 We're not saying that's the case. We're saying we
18 need to be given the time, the time, not only us, but our
19 financial advisors to do this analysis. So that's one of the
20 elements.

21 The other element, Your Honor, it goes back to the
22 retail holders. There's a section of PROMESA, 104,
23 subparagraph O, as in Oscar, that was put in there that says
24 that investigation with respect to the practices, with respect
25 to the sale of bonds, disclosure practices and sales practices

1 with respect to the sale of bonds to retail holders should be
2 or could be conducted. To our knowledge, that has not
3 occurred.

4 You might say, okay, interesting, but so what. How
5 does that affect, for example, the motion you have to lift the
6 stay in the ERS case this afternoon? And probably in that
7 case, it does not. But in the context of global case issues,
8 this is something that the committee needs to look at. And
9 that's a very important point.

10 So what I'm saying is the relief we're seeking may
11 not be one size fits all. For certain matters, for example,
12 the ERS motion to lift the stay, I think we can probably deal
13 with going forward and going forward today. But for other
14 matters, I mentioned mediation, that's a global case issue.
15 The committee needs some time to deal with that.

16 So what are we asking? There are various deadlines
17 coming up, Your Honor. For example, deadlines to intervene on
18 various proceedings and all that.

19 For the nonglobal matters, and by that I mean putting
20 aside the mediation for now, because I think we have some
21 comfort that the July meeting is organizational at this point.
22 We need a period of 20 days to -- relief of 20 days to file
23 whatever pleadings we decide to file, intervention, objection,
24 et cetera.

25 And I know that this may be disruptive to the

1 process, and we -- it may very well be that we will not file
2 responsive pleadings or intervention pleadings in a number of
3 these matters. But initially, in order to be constructive and
4 to give, you know, to make sure that the creditors on the
5 island feel that the committee is playing a constructive role,
6 we need that short breathing spell, Your Honor, of 20 days.

7 For the mediation, I guess we'll deal with Judge
8 Houser on that, but it will be a longer period because the
9 issues there are monumental in terms of importance, but also
10 in terms of complexity.

11 THE COURT: And so thank you for that very well
12 contextualized statement and request. I am sure that the
13 mediation team, which literally wants and needs to meet
14 parties and groups where they are in order to engage
15 appropriately in mediation will take the issues that you've
16 raised into account in scheduling.

17 Perhaps because I don't have a perfect universal
18 memory, it's still -- of all of the deadlines that are in
19 place, it's still a bit unclear to me that there are deadlines
20 that have been set which directly implicate concerns that you
21 might want to engage with.

22 For instance, in the pending Bank of New York Mellon
23 COFINA interpleader, there was a deadline for complaints in --
24 for motions to intervene. There is pending a motion to
25 intervene by the GO bondholders. And there is a schedule for

1 cueing up what is principally in focus intraCOFINA bondholder
2 disputes.

3 There I might suggest that you await my determination
4 on the GO bondholders intervention motion, which is fully
5 briefed, and if you feel the need to make a request, to
6 make -- to intervene, to make an intervention application for
7 the committee, it can be a more informed, targeted application
8 rather than simply reopening that deadline.

9 There is also a litigation schedule in place for a
10 preliminary injunction motion in the HTA case by Peaje, and
11 there are insurer adversaries in that case. And then there is
12 a proceeding, a summary judgment proceeding cueing up toward a
13 September hearing date.

14 So all of this is to say that from my perspective, I
15 would rather that in the short term, you take the time over
16 the next few days or a couple of weeks to look at what's there
17 on the table in terms of deadlines, and I'm sure that
18 Oversight Committee counsel will help you with that. And
19 everything, of course, is on the docket.

20 And then to the extent you feel a need to make a
21 targeted immediate request for some different deadline to make
22 some sort of submission or seek to intervene, I can respond to
23 that in a more informed way and we can do it in a way that's
24 more efficient.

25 MR. DESPINS: So yes, if we do it on a case-by-case

1 basis, I agree it will probably be more efficient. And we're
2 getting ahead of ourselves, but there's a motion, for example,
3 to set up a procedure on the issue of GO bond -- or the
4 Commonwealth versus COFINA. And Your Honor --

5 THE COURT: We will be talking about that motion.

6 MR. DESPINS: Exactly. So I think that that may --
7 but I know, for example, that there's a deadline to file a
8 motion to intervene in the Peaje investment case of June 29,
9 which is tomorrow.

10 So that's the kind of deadline we're concerned of
11 getting defaulted. But if we can come back to the Court on a
12 case-by-case basis and not be deemed to be time barred for
13 these things, then we're fine with that.

14 THE COURT: That application is correct.

15 MR. DESPINS: Okay. Thank you.

16 THE COURT: Thank you.

17 Yes, sir.

18 MR. ROSENBERG: Good morning, Your Honor. Andrew
19 Rosenberg, Paul, Weiss, Rifkind, Wharton & Garrison LLP for
20 the GO bondholder group. I'll be very brief.

21 I, too, admit that I cannot possibly remember all of
22 the deadlines and all of the various pleadings to be filed in
23 the blizzard of papers that has been bestowed upon the Court.
24 I just have two quick remarks. One was counsel for the
25 committee mentioned that we are looking out for the GO

1 bondholders, retail GO bondholders. Love the fact on the one
2 hand that they are -- the unsecured committee is looking out
3 for us or them. On the other hand, I want to make sure the
4 record is clear to make it known the GO bondholders know we
5 have various liens. I did want to mention that since that
6 might be forgotten in the context of the unsecured committee
7 looking out for us.

8 And second, just in terms of the mediation, the one
9 thing I would hope is that all other deadlines aside, that the
10 mediation hopefully can proceed as quickly as possible. I
11 think one only need look around the courtroom here to see the
12 number of parties and the number of issues and the incredible
13 expense being incurred, that the sooner the mediation
14 involving all of the relevant issues in this case can be
15 commenced, I think that probably would be hopefully the best
16 for everybody. Thank you.

17 THE COURT: Thank you.

18 MR. DUNNE: Your Honor, may it please the Court.
19 Dennis Dunne for Milbank Tweed on behalf of Ambac Assurance
20 Corporation. I'll be less than two minutes on this.

21 I just wanted to pick up on one hypothetical that
22 Your Honor raised, which was the interpleader action on
23 COFINA. I was a little unsure of what the last comment meant
24 in terms of Mr. Despins may be able to come back at some point
25 in time and ask to intervene in that.

1 I think we should see where we are at the end of the
2 day, as Your Honor was saying with respect to that, because
3 we're dealing with the creditors committee. That's not a
4 creditors committee of COFINA.

5 They already have one representative from the
6 Commonwealth, the GOs, who are trying to come into that
7 litigation. The creditor, the creditor arguments are all
8 going to be the same with respect to Mr. Despina as they are
9 with Mr. Rosenberg. And Your Honor's going to decide that
10 intervention motion and presumably give us some guidance
11 today.

12 THE COURT: I am not intending to make my ruling on
13 that orally today, but I do expect that it will be issued
14 soon.

15 MR. DUNNE: And we believe that that issue, the
16 waterfall, the default acceleration rights within COFINA, the
17 credit issue is a paramount issue of importance here because
18 it guides settlement and informs a bunch of other pieces of
19 litigation.

20 That what we don't want to do is slow that down as a
21 result of 20 days from now finding we have to relitigate an
22 intervention motion that may be decided in the next couple of
23 days.

24 So all I'm saying today is I'd like to reserve my
25 right to have that discussion, if they aren't announced, on

1 that issue, because depending on which way you come out, it
2 could be more or less relevant for me on that issue -- we may
3 need to know sooner than 20 days if litigation issues comes
4 up.

5 THE COURT: Thank you. It's basically the structure
6 that I had in mind. I will be making my ruling on the motion
7 that is fully briefed. And I expect that Mr. Despins'
8 decision on whether he wants to seek to intervene would be
9 informed by and responsive in a way to whatever ruling I make.
10 And it would be -- I am giving him permission to re-raise in
11 that context his application for an extended period to seek to
12 intervene.

13 So there are a couple of steps there, and there are
14 discussions and determinations that can and should be had in
15 that context.

16 MR. DUNNE: Thank you, Your Honor.

17 One last point, just a factual one. And
18 Mr. Rosenberg touched on this. Mr. Despins said that the
19 creditors committee for the Commonwealth is a fiduciary for
20 all the unsecureds, including the GOs. On a factual note, I
21 know that a number of Mr. Rosenberg's clients sought to serve
22 on that committee, as well as a number of insurers who insure
23 general obligation bonds. They were not appointed to that
24 creditors committee.

25 So the notion that they were not appointed to the

1 committee to potentially provide some representation or voice
2 for the GOs -- we get the committee is fully charged with that
3 representation. I think the conclusion is the opposite. I
4 think it's more likely the U.S. Trustee decided for the reason
5 that Mr. Rosenberg said, that because of their constitutional
6 priority above the unsecured creditor class, that they were
7 not appropriate appointees to, or members of, the creditors
8 committee for purposes of discharging a duty to the general
9 unsecured class at the Commonwealth.

10 THE COURT: Clearly that is an issue.

11 MR. DUNNE: Yes. Thank you, Your Honor.

12 THE COURT: Thank you.

13 All right then. I think at this point we get to turn
14 to the uncontested matters part of the agenda, which are
15 action items. As we move into these items, we have some new
16 technology here. I'll be using the light system on the podium
17 to help us all stay within the time allocations that were
18 proposed on the agenda.

19 I'm hopeful that we can stay well under those time
20 allocations, and I still retain some hope that we'll be able
21 to address everything on the agenda today without having to
22 reconvene tomorrow.

23 So we will set the timer for the time allotment on
24 the agenda. The yellow light will go on when half of that
25 time has elapsed, and the red light will go on when the time

1 has run out. And there is a lighted display on the podium for
2 which the person at the podium can see how much time is left.

3 So please be brief and nonduplicative in remarks
4 concerning any contested matters. And try to focus on truly
5 contested material issues, as the agenda is long. And bear in
6 mind that I have reviewed your submissions.

7 So Mr. Bienenstock.

8 MR. BIENENSTOCK: Your Honor, if it's okay, my
9 partner, Paul Possinger, will present the uncontested
10 motions.

11 THE COURT: Very well. Thank you, Mr. Possinger.

12 MR. POSSINGER: Thank you, Your Honor. Paul
13 Possinger, Proskauer Rose, on behalf of the Oversight Board.

14 Your Honor, I will be addressing the Epiq employment
15 application, the joint administration motion, and the motion
16 to apply to confirm application of the stay in these cases.
17 As Mr. Bienenstock indicated, the latter two are now
18 uncontested. We filed updated Orders yesterday on the joint
19 administration and stay motions.

20 So I think because all three of those motions are now
21 uncontested, it may be most efficient to simply ask if Your
22 Honor has any questions or concerns regarding the motions or
23 any proposed Orders on those three matters.

24 THE COURT: I do not believe I do, but let me just
25 check my notes. So we have the Epiq motion, the joint

1 administration, and the stay confirmation motion.

2 So on the Epiq motion, that is granted, and I will
3 enter an Order in the form of docket entry number 299-3, which
4 was filed in the 17-3283 master docket.

5 MR. POSSINGER: Thank you, Your Honor.

6 THE COURT: The joint administration motion -- so
7 just to confirm, the Peaje and ERS secured creditors
8 objections are withdrawn.

9 MR. POSSINGER: I believe that is the case, Your
10 Honor. Peaje's counsel is present.

11 MR. BRILLIANT: Yes, Your Honor. Pursuant to the
12 agreement we had with the modified Order, we withdraw our
13 position.

14 THE COURT: Thank you, Mr. Brilliant.

15 MR. BRILLIANT: Yes, Your Honor. I'm sorry. Allen
16 Brilliant on behalf of Peaje.

17 THE COURT: Thank you.

18 And the ERS secured creditors.

19 MR. BENNETT: Bruce Bennett on behalf of the ERS
20 secured creditors. Yes, we have reached an agreement on the
21 form of the creditors.

22 THE COURT: Thank you, Mr. Bennett. Therefore, the
23 joint administration -- I'm sorry.

24 MR. DECHIARA: Your Honor, I'm here to speak on the
25 stay application.

1 THE COURT: All right. So there's someone who wants
2 to speak on the stay application, and we'll get to that in a
3 moment.

4 So the joint administration motion is granted. And
5 the Court will enter the proposed Order that was filed as to
6 docket entry number 513 in 17-3283. Let me just make sure I
7 don't have -- 513-1 in 17-3283. That was filed on the 27th of
8 June at 6:30 in the afternoon.

9 So is that the one I should be talking about?

10 MR. POSSINGER: That's correct, Your Honor.

11 I'm also looking at docket number 150 in case number
12 17-3566. That is the ERS case. They are identical.

13 THE COURT: So as long as I file an identical Order
14 in each of the cases, it doesn't matter which filing I take
15 up; is that correct?

16 MR. POSSINGER: That's correct.

17 THE COURT: Thank you very much.

18 So now with respect to the extension of the automatic
19 stay, you indicated it's your understanding that it's
20 uncontested, but there are two people standing in the aisle,
21 which suggests to me that they may have some differences. But
22 first, will you explain why you state it's uncontested?

23 MR. POSSINGER: Yes, Your Honor. There were eight
24 objections filed to this motion. We then engaged with each of
25 the objecting parties and made significant revisions to the

1 Order, really just to make it clear that the Order is
2 confirming the application of the stays as they exist on 362
3 and 922 of the Bankruptcy Code; that they don't apply to
4 adversary proceedings; that the stays don't apply to adversary
5 proceedings in this case. They don't apply to discovery in
6 those adversary proceedings in these cases.

7 And so we made extensive provisions. Late yesterday
8 we made the final round of provisions based on comments that
9 we received from Peaje to resolve the eighth objection.

10 At the time we filed on Saturday, we had resolved
11 seven of the eight. So it's my understanding that the updated
12 Order that we filed last night at docket number 516-1 resolves
13 all of the objections to this motion.

14 THE COURT: All right. And so I ask you to step
15 aside so that the gentleman who's standing there can introduce
16 himself and speak.

17 MR. DECHIARA: Good morning, Your Honor. Peter
18 DeChiara from the law firm of Cohen, Weiss and Simon, LLP. We
19 are counsel for the Service Employees International Union and
20 the United Auto Workers Union. I will be brief, Your Honor.

21 These two unions together represent about 23,000
22 employees of the Commonwealth of Puerto Rico. They include
23 school cafeteria workers, janitors, people who get up and go
24 to work each morning and allow the offices, and schools,
25 hospitals and government offices of this island to function.

1 They are modestly paid, some barely above the poverty level.

2 It's through these unions that they seek to have
3 their voices heard in these proceedings. These two unions,
4 the UAW and SEIU, we don't object to the stay motion, and we
5 don't have any issues with the revised proposed Order. But we
6 do rise to raise an issue that is a critical one for our
7 members, and we wanted to alert the Court to the issue.

8 At the core of every collective bargaining
9 relationship is a grievance arbitration machinery that allows
10 disputes to be resolved expeditiously and out of court. The
11 Supreme Court has ruled again and again that a smoothly
12 functioning grievance procedure is critical to maintaining
13 labor peace and productive labor relations, and the courts of
14 the Commonwealth have recognized that same principle.

15 The Commonwealth's unionized workforce, like any
16 large unionized workforce, generates as a matter of course a
17 substantial number of disputes, grievances over matters such
18 as employee discharge, employee discipline, alleged violations
19 by management. At any given time, there are dozens, if not
20 hundreds, of grievances pending.

21 Some concededly involve relatively minor matters, but
22 some, like unjust discharge of an employee, are grave matters
23 to the employee involved and his or her family.

24 THE COURT: I understand. So are you asking me to do
25 something in particular at this time, or are you asking that

1 the Oversight Board hear that you are going to come to them
2 with some sort of a streamlining proposal for applications to
3 lift stay on grievance matters? I'd ask you to cut to the
4 chase.

5 MR. DECHIARA: Let me get right to the chase, Your
6 Honor. Thank you.

7 We have a legal disagreement, let me put it that way,
8 with the Oversight Board. We believe that under PROMESA, the
9 automatic stay does not bar the processing of the grievances
10 and arbitrations.

11 I understand the Oversight Board disagrees with our
12 position. I am not here today to argue that position. The
13 debtors have indicated a willingness to meet with us to
14 discuss a process for allowing -- to talk about the
15 possibility of allowing grievances and arbitrations to go
16 forward, and we appreciate that from the debtors and we intend
17 to work with them in good faith to get that done.

18 So to conclude, I hope, Your Honor, never have to
19 appear before this Court to argue the issue, but we thought it
20 was important, because it's just a critical issue, to alert
21 the Court that there is a potential dispute which we hope we
22 can resolve and you'll never have to rule on it. Thank you.

23 THE COURT: Thank you.

24 MS. LEVINE: Good morning, Your Honor. Very briefly,
25 Sharon Levine on behalf of the American Federation of State

1 and Municipal Employees. We joined in response and dialogue
2 with counsel for the Oversight Board and appreciate that
3 conversation.

4 We met with members yesterday, some last night, and
5 obviously this is just a very stressful situation, so just the
6 idea that there is a dialogue has been helpful. Thank you.

7 THE COURT: Thank you. And I am glad to hear it.

8 MR. POSSINGER: Paul Possinger again for the
9 Oversight Board. Yes, we had those discussions. As Your
10 Honor may have seen, there are many lift stay motions already
11 coming in on sort of an ordinary course on operational matters
12 such as automobile repossession, things like that.

13 THE COURT: Yes.

14 MR. POSSINGER: Including these employment matters.
15 And rather than having to address these as they arise
16 piecemeal, because there could be hundreds of them --

17 THE COURT: The Court would appreciate that.

18 MR. POSSINGER: Understood.

19 THE COURT: So as they come in and until I am given
20 notice of some agreed global protocol, as you've seen when a
21 lift stay motion comes in, I enter an Order setting a
22 timetable that's within the Section 362 timetable, provided
23 it's on submission, unless someone asks for a hearing, and
24 then in the very ordinary course, things that have happened so
25 far, it's turned out to be unopposed. And then I go ahead and

1 I file my Order.

2 So it would be nice if I didn't have to do that
3 motion by motion, but until I find out that I don't, I'll do
4 it motion by motion.

5 MR. POSSINGER: And we appreciate that it would be
6 nice if the employees don't have to do it motion by motion.

7 THE COURT: Yes.

8 MR. POSSINGER: And I think Your Honor has already
9 seen, we've done this on an automobile case that didn't
10 require a motion. So we'll work with them.

11 THE COURT: Yes. Thank you.

12 And so the extension of automatic stay 105 motion is
13 granted to the extent embodied in the proposed revised Order,
14 which was filed as 516-2 in case 17-3283, which grants a
15 narrower and more focused scope of relief than the original
16 motion had sought.

17 MR. POSSINGER: That's correct, Your Honor.

18 THE COURT: And I thank you all for working to
19 resolve all of the objections.

20 MR. POSSINGER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. POSSINGER: I believe the utilities motion is
23 next, and that's a motion of AAFAF.

24 THE COURT: Thank you.

25 MS. UHLAND: Good morning, Your Honor, Suzanne

1 Uhland of O'Melveny & Myers on behalf of AAFAF, representing
2 the debtor entities.

3 THE COURT: Good morning, Ms. Uhland.

4 MS. UHLAND: Good morning. I believe we have a
5 consensual arrangement. We had one objector, Stericycle, that
6 did not confirm its agreement to our revised form of Order,
7 although we do believe that our revised form of Order did
8 address all of their objections.

9 THE COURT: Is there anyone here who wishes to speak
10 for Stericycle? A gentleman has just risen.

11 MR. LINARES: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. LINARES: Adrian Linares on behalf of
14 Stericycle.

15 THE COURT: May I just ask you to say your name once
16 more slowly?

17 MR. LINARES: Yes, ma'am.

18 THE COURT: And spell it.

19 MR. LINARES: Adrian, A-d-r-i-a-n. My last is
20 Linares, L-i-n-a-r-e-s.

21 THE COURT: Thank you, Mr. Linares. Please
22 proceed.

23 MR. LINARES: Thank you, Your Honor. We don't have
24 an answer in a definite way, because our clients have been
25 traveling and we haven't discussed the final proposal of the

1 motion. But as of today, it appears to me that it's quite
2 fine, so I believe in the next five days we will have a formal
3 response to that.

4 THE COURT: Well, let me ask you this: If I were to
5 grant the motion today, given the deadlines that had been set,
6 this Order sets up a procedure for identifying a particular
7 issue with respect to a particular service provider. And so
8 your client would be able to invoke that procedure, I suppose,
9 you know, if there is currently an issue.

10 MR. LINARES: Yes.

11 THE COURT: And so is there any real impediment that
12 you can identify for me today to signing the Order as --
13 entering the Order as proposed?

14 MR. LINARES: Honestly, no.

15 The COURT: Thank you for your candor.

16 MR. LINARES: Okay.

17 MS. UHLAND: Thank you, Your Honor. The proposed
18 Order does have one date to be filled in.

19 THE COURT: So I have document 442 filed in 3283.

20 MS. UHLAND: Yes.

21 THE COURT: So would you point me to --

22 MS. UHLAND: Paragraph seven.

23 THE COURT: Yes. And what is your suggestion as to
24 the request deadline, assuming that I don't actually enter
25 this Order until tomorrow or thereabouts?

1 MS. UHLAND: I would like to give people a sufficient
2 -- I guess working backwards from the next Omnibus hearing, if
3 we had two weeks prior to that hearing to address anything
4 requested, I think that would be fine.

5 THE COURT: Would it make sense to express this in
6 terms of a formula that sort of renews and applies itself with
7 respect to each Omni going forward rather than a particular
8 date that would then require me to enter a superseding Order
9 in the event that issues come up --

10 MS. UHLAND: Yes.

11 THE COURT: -- before the next Omni?

12 MS. UHLAND: Yes. So maybe we could rewrite it so
13 it's noticed in accordance with the motion, timing for a
14 regular matter.

15 THE COURT: I think that makes sense. And so I will
16 look to you to file a notice of presentment on -- we'll call
17 it five days notice, I think that's what we looked at last
18 time, for a revised Order that incorporates a formula here
19 rather than a specific date.

20 MS. UHLAND: Okay. We will do so.

21 THE COURT: With that caveat, the motion is granted,
22 and I will look forward to the revised proposed Order.

23 MS. UHLAND: All right. Thank you, Your Honor.

24 THE COURT: Thank you.

25 And so I believe that the next agenda item is the

1 Mutual Fund Group's Lift Stay motion.

2 MR. BENTLEY: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. BENTLEY: Philip Bentley of Kramer, Levin,
5 Naftalis and Frankel for the Mutual Funds Group.

6 We've agreed with our co-defendants in the Puerto
7 Rico Funds that I'll be taking the lead on this morning's
8 argument. My co-counsel, Jason Zakia, from the Puerto Rico
9 Funds will be adding a few brief comments after I'm done.

10 THE COURT: Just to reiterate how we're doing the
11 lights, we've just set the light for 30 minutes, and it will
12 go yellow at 15 minutes. And I will expect within that half
13 hour, everyone who wants and needs to be heard on this will
14 have an opportunity to speak.

15 MR. BENTLEY: And I have a proposal on how to deal
16 with that.

17 I would ask if the Court sees fit, that the two of us
18 be given a total of 15 minutes, including brief rebuttal, and
19 that the objectors themselves divide up the remaining 15
20 minutes.

21 THE COURT: Can the objectors live with that? I hear
22 yes.

23 So how much time do you want to reserve for rebuttal?

24 MR. BENTLEY: If Your Honor wouldn't mind, I would
25 like to leave the balance of my time, but if you want me to

1 carve it up in advance, I would say three minutes.

2 THE COURT: If you mean the balance and --

3 MR. BENTLEY: The balance that remains after
4 Mr. Zakia and I are done.

5 THE COURT: Right. So I'm going to -- we're going to
6 look at 12 minutes as you go along now, and we'll warn you at
7 12 minutes, or you look at 12 minutes and we'll stop you there
8 if you want to have three left at least.

9 MR. BENTLEY: That's great, Your Honor. I appreciate
10 it.

11 THE COURT: All right. Please proceed.

12 MR. BENTLEY: The motion we've filed presents Your
13 Honor with a fundamental choice, which court should decide the
14 issue of whether the Puerto Rico Statutes that created the
15 COFINA structure are valid or not under the Puerto Rico
16 Constitution.

17 Should it be a federal court, meaning this court,
18 subject to, in all likelihood, an appeal by whichever party
19 loses, or a court up in Boston, or should it be a Commonwealth
20 court, and specifically the Puerto Rico Supreme Court to whom
21 the Court can certify its issues directly.

22 I'm going to present three points in support of our
23 motion this morning. The first one which I'll spend most of
24 my time on is we believe the arguments for certifying this
25 matter to the Puerto Rico Supreme Court are overwhelmingly

1 strong. I'll return to that in a moment.

2 My second point is time, we think, is of the essence.
3 Your Honor has heard from the Oversight Board, from AAFAF that
4 by November 1, they believe they may run out of cash. The
5 Commonwealth may run out of cash and may need access to
6 COFINA's funds in order to continue their operations.

7 We don't believe that November 1 is a real deadline.
8 I won't go into the details of that, but one -- just one
9 detail is there's recently been mention of 800 million dollars
10 being available that hadn't previously been identified.
11 That's a large sum that could effect the timing quite a bit.

12 But the point that's relevant for this motion is at
13 some point, and we don't know when, at some point, suddenly
14 and perhaps unexpectedly, Your Honor will find herself within
15 another urgent motion in front of you, perhaps by the
16 Oversight Board, perhaps by AAFAF, saying Your Honor, we now
17 need COFINA's money and we need a ruling within X days. And X
18 is probably not going to be a lot longer than maybe 30 days.

19 If and when that happens, it will be too late for
20 Your Honor, if you were inclined at that time, to send the
21 matter to the Puerto Rico Supreme Court. Your Honor would
22 probably be put in a position where you would be forced to
23 rule, perhaps on a preliminary basis, perhaps on a final
24 basis, as to this fundamental issue of Puerto Rico
25 constitutional law. Because that will be at the heart of the

1 issue that you may be asked to decide on an expedited basis,
2 can COFINA's cash be taken?

3 And so we believe that Your Honor really needs to
4 decide today, do you want to send that issue to the Puerto
5 Rico Supreme Court.

6 THE COURT: Now, I believe in the papers filed by the
7 Oversight Board and AAFAF, one response to your urgency, and
8 let's avoid a midnight call argument, is that in the event
9 that they need help or support from COFINA, the first step
10 would be some, you know, borrowing from COFINA as opposed to
11 an assertion of the right to permanently alienate from COFINA
12 whatever the funds are that they feel are needed at that
13 particular moment.

14 And I see Mr. Bienenstock nodding, so I've got it
15 mostly right, at least.

16 So that, both the express message there and the
17 urtext is that if this problem does need to be managed in
18 context, it doesn't need a final decision overnight, because
19 it would be set up as a loan.

20 So do you have a response to that?

21 MR. BENTLEY: I do, Your Honor. I understand that
22 that's what they've said. We have concerns about whether a
23 loan could adequately secure COFINA's entitlement to the
24 funds, given the Commonwealth in this scenario would say we
25 think we're going to be running out of cash.

1 We think in that circumstance, there would be a risk
2 of COFINA getting not the cash we think it's entitled to, but
3 rather a loan that doesn't provide it with adequate security
4 for those funds.

5 THE COURT: Thank you. You can continue.

6 MR. BENTLEY: The third of my three big picture
7 points is we heard Judge Houser's introduction to the
8 mediation team, the mediation process. Everybody in this
9 courtroom, I think, hopes that the mediation will be
10 successful. That will be the best for everybody and for the
11 island.

12 A mediator needs tools. A mediator needs the parties
13 to be incentivized to settle. And Your Honor is very familiar
14 with the technique of setting a trial date to force the
15 parties to settle, to force them to make the difficult
16 decisions that they won't make until they really have a gun to
17 their head.

18 In this case, we think what's most akin to a gun to
19 the head or a trial date is an upcoming ruling, an expected
20 ruling by the Puerto Rico Supreme Court. That's the ruling,
21 that's the one ruling that cannot be appealed except by the
22 longshot mechanism of seeking cert from the U.S. Supreme
23 Court, which might be difficult given that the key issues
24 there are issues of Puerto Rico law.

25 Whereas if Your Honor -- if the gun to the parties'

1 head were an expected ruling by Your Honor on this issue of
2 Puerto Rico law, it might have less -- might be less
3 threatening to the parties because it would be expected that
4 the losing party would appeal. And so the ultimate
5 decision -- and then the First Circuit might itself send the
6 case back to the Puerto Rico Supreme Court, as circuit courts
7 often do.

8 So that would be not an imminent gun to the head. It
9 would be perhaps a gun with soft bullets. So that's our
10 second pitch, Your Honor. We think setting this process in
11 motion of getting the issue to the Supreme Court now will give
12 the mediators the strongest tools to work with to fully get
13 the parties' attention.

14 THE COURT: Now, I noted reading your papers that you
15 were not arguing lack of adequate protection. You are arguing
16 cause in the form of these various efficiency dispute
17 resolution promotion considerations; is that correct?

18 MR. BENTLEY: As to the lift stay matter, that is
19 correct. With respect to the protocol motion and some of the
20 procedures that are proposed here, we're very certainly
21 arguing adequate protection, but that's a separate matter.

22 THE COURT: Thank you.

23 And do you have any further response to the
24 objections that the Supreme Court of Puerto Rico at the end of
25 the day isn't likely to accept the certified questions because

1 they arise in the context of PROMESA and therefore, at least
2 possibly involve mixed questions of federal and state law?

3 You've cited the 2003 Judiciary Act in your papers,
4 but as we read them, the Puerto Rico Supreme Court Rule 25(B)
5 still says that the Court would not except certification of a
6 mixed question of federal and local law.

7 So do you have any further -- anything further for me
8 than what's in your papers about why you feel so sure that if
9 we allow Judge Besosa to decide whether he wants to certify
10 and then certifies, they'd be likely to take it?

11 MR. BENTLEY: Yes. As we say in our papers, the
12 rules have been relaxed a lot since the cases decided by the
13 other side were handed down. And yes, the Puerto Rico Supreme
14 Court has a lot of discretion. And yes, it will come down to
15 their discretion here.

16 And for the reasons I'm going to get to in a moment,
17 we think that they will agree that the reasons for having them
18 decide this issue are overwhelmingly strong. And that would
19 overcome, we believe, any concern they may have about mixed
20 questions of law.

21 The one other thing I would say, Your Honor, is we
22 think the notion that there are federal laws here is just not
23 founded. And very briefly on that, first, as we say in our
24 papers, for the past 40 years it's been clear First Circuit
25 Supreme Court authority that a debtor's interest in property

1 is determined by state law, here Commonwealth law, not by
2 federal law.

3 The only case cited by the Oversight Board contrary
4 to that is 42 years old. It's superseded by those more recent
5 cases.

6 As for PROMESA 305 and 306, we think they clearly
7 don't apply. I won't repeat the arguments in our papers
8 unless Your Honor has questions.

9 But I'd just add one brief point, and that is even if
10 Your Honor thought there was some ambiguity in 305 and 6 such
11 that they might apply, we think the clincher would be the
12 Fifth Amendment. The Fifth Amendment says once property
13 rights have been created, a later statute can't later be
14 enacted that takes away those property rights.

15 Here if we're right that these property rights were
16 created and were valid ten years ago when COFINA was set up,
17 PROMESA can't take away those property rights because it was
18 clear back then and up until the time -- until PROMESA was
19 enacted, Puerto Rico hadn't been subject to the bankruptcy
20 law. Puerto Rico had been treated like a state.

21 That's why Puerto Rico felt the need to enact its
22 bankruptcy reform. It's the DERA Act, Debt Enforcement and
23 Recovery Act, which the Supreme threw out. It's because
24 Congress had never allowed Puerto Rico to use the bankruptcy
25 laws. So PROMESA fundamentally changes that. And if PROMESA

1 | were read to take away our property rights, that would be a
2 | take.

3 | THE COURT: Thank you.

4 | MR. BENTLEY: I'll turn that, if I may, to the main
5 | point, and I'll try to cover that briefly. And that is if
6 | there ever were a case that warrants a certification to a
7 | state Supreme Court here at the Commonwealth Supreme Court, we
8 | think this is it for a number of reasons. First --

9 | THE COURT: I think you're running on one minute to
10 | your 12. Is that -- okay.

11 | MR. BENTLEY: Okay. I may cut a little bit into my
12 | rebuttal time, but let me try to be brief.

13 | First, it's not only an unsettled issue of Puerto
14 | Rico law. There's not a single Puerto Rico precedent, so the
15 | Court would be starting from scratch.

16 | Second, we're not talking about Puerto Rico common
17 | law or statute, we're talking about the Commonwealth's
18 | foundational document, the Constitution.

19 | And third, this is a matter of just overwhelming and
20 | practical importance to the island for several reasons. It's
21 | the cornerstone for any restructuring. I think most parties
22 | in this courtroom agree, it's the issue that needs to be
23 | resolved first.

24 | And second, if the Court, whether it's Your Honor or
25 | the First Circuit or the Puerto Rico Supreme Court were to

1 strike down COFINA and say no, under Puerto Rico's
2 institution, you can't securitize tax revenues, that could
3 have a devastating impact going forward on the ability of the
4 Commonwealth to issue new bonds that were -- that gave us a
5 security interest in tax revenues.

6 A Federal Court, Your Honor, the First Circuit,
7 shouldn't be put in a position of making a decision of that
8 monumental of an impact on Puerto Rico.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. ZAKIA: Mr. Bentley made the point, and I won't
12 repeat them, but just one thing I'd like to emphasize on a
13 question Your Honor asked. No one is proposing certifying the
14 Puerto Rico Supreme Court and -- issues of Puerto Rico law.
15 The issue that is proposed to be certified is whether COFINA,
16 the structure is valid under the Commonwealth law. The issue
17 raised, which they believe and we disagree, that under the
18 Commonwealth institution, these statutes which provide for the
19 title of these funds to go to COFINA are intact. That is
20 purely a question of Commonwealth law.

21 As Mr. Bentley explained, it is a critically
22 important question. So the one, I guess, point I would add to
23 that is a matter of comity, in addition to efficiency, and
24 he's actually right.

25 One thing Judge Houser said is when Your Honor makes

1 decisions, that's one step in the process to resolution, but
2 there are additional steps. In this particular instance,
3 going directly to the Supreme Court of Puerto Rico let's us do
4 that one step.

5 So if there are going to be courthouse steps in which
6 to settle this case, that's the proper courthouse we would
7 submit. But there is no proposal to certify, and I think that
8 needs to be clear.

9 THE COURT: Thank you.

10 So I will -- there's one minute and five seconds left
11 in the movant's time, so will the first opponent please come
12 to the podium as quickly as possible.

13 Mr. Bienenstock, please.

14 MR. BIENENSTOCK: Thank you, Your Honor. And I will
15 be as -- Martin Bienenstock with Proskauer Rose for the
16 Oversight Board. I'll be as quick as possible.

17 Following points. First, the issue that is to be
18 determined in this case is whether under PROMESA Section
19 306(b), the sales and use taxes at issue are property of the
20 debtor. That is a federal question arising under federal
21 statute. It may or may not be informed, under territory law,
22 that the taxes are subject to being available resources of the
23 Commonwealth.

24 Two, they don't like Colonial Realty. We made our
25 argument. I won't pursue that. We think we're right, but I

1 don't want to use the time on that. Let me take a much more
2 classic, federal bankruptcy question issue that this involves,
3 finality.

4 If a debtor files a Chapter 7 liquidation case, an
5 individual, and says that there's a million dollars in trust
6 for the debtor's daughter that's not property of the estate
7 because debtor put it in trust a long time before bankruptcy,
8 no issues for transfer, the debtor would be right unless the
9 debtor reserved the power to revoke the trust.

10 If it has the power to revoke the trust, then what's
11 in the trust is part of the bankruptcy estate. Here, the
12 Puerto Rico legislature passed a law saying the sales and use
13 taxes are not available resources of the Commonwealth. Puerto
14 Rico legislature can pass another statute saying they are,
15 with that terminus.

16 Does that make this property of the debtor for
17 purposes of 306(b) of PROMESA? That's the issue. There are
18 arguments on both sides. But it is a federal question, and
19 that's the question that needs to be certified.

20 Second, the Commonwealth and COFINA own that question
21 and that cause of action, not creditors who are litigating
22 before these cases started based on their interest as secured
23 creditors of COFINA. They're only secured by what COFINA has.
24 The question is, what does COFINA have. Is it property of
25 COFINA or is it property of the Commonwealth?

1 Your Honor, those are really the basic questions. I
2 could tell from Your Honor's comments that Your Honor fully
3 absorbed our pleadings, so I'll defer to the next person.

4 THE COURT: Thank you.

5 Mr. Kirpalani.

6 MR. KIRPALANI: Good morning, Your Honor. For the
7 record, Susheel Kirpalani of Quinn Emanuel on behalf of the
8 COFINA Senior Bondholders Coalition.

9 I'll also be very careful with the time, because we
10 want to get through this, and there's other people who deserve
11 the time to speak.

12 This is a very limited motion and a limited question.
13 I feel a little bit like the mutual funds have tried to hijack
14 the process and the important question that the Court, this
15 Court will have to determine at some point, and that is do you
16 need, does Your Honor need advice or instruction or guidance
17 from the Puerto Rico Supreme Court.

18 This motion does not need to reach that issue. This
19 motion is a motion to lift the stay, frankly, in a case where
20 the plaintiffs themselves have opposed the motion where the
21 plaintiff's themselves lack standing because of the
22 intervention of the Title III cases.

23 It's a point that I made to the First Circuit that
24 once we get to a Title III case, only the Trustee in
25 bankruptcy will have standing on behalf of the Commonwealth to

1 bring the potential challenge to COFINA. And it was us that
2 filed the certification motion to the Supreme Court, not the
3 mutual funds.

4 So when they asked us if we would join in this, our
5 reaction was this was entirely premature and Lex Claims is
6 simply the wrong vehicle. Mr. Bienenstock and the Oversight
7 Board filed a motion for a protocol, which we'll address when
8 that issue is up before Your Honor later today.

9 But there will be come a time Your Honor may notice
10 that in the proposed order that we submitted in connection
11 with the protocol, we struck the word "this Court" would
12 determine the issues, and instead we said the "appropriate
13 court."

14 Because Your Honor, even if it's filed before you,
15 may decide, I want to certify certain questions to the Puerto
16 Rico Supreme Court. That doesn't need to be decided in the
17 context of this motion to lift the stay.

18 This motion to lift the stay is defective because the
19 plaintiffs themselves lack standing and, therefore, the action
20 lacks Article III case or controversy.

21 With respect to the issue that Mr. Bienenstock just
22 raised, federal question issues relating to the property of
23 the estate, as we point out, there is no estate under Section
24 541 in PROMESA's property of the debtor.

25 And I don't agree that it will be a mixed question of

1 federal and state law and territory law. I do believe the
2 issues will ultimately be those of Puerto Rico law, unless we
3 can settle them.

4 And with respect to the right or reversionary
5 interest to revoke, we filed a lawsuit in Federal Court citing
6 the U.S. and Puerto Rico Constitutions contracts clause
7 because what Mr. Bienenstock did not remind the Court is that
8 along with that right to revert, revoke or change the laws,
9 there was also a nonimpairment covenant that was given by the
10 Commonwealth that they will never do exactly that. And so
11 there is a hierarchy and analysis under Constitutional
12 jurisprudence of what that means.

13 We filed a lawsuit to explain what that means on May
14 2nd. It has been stayed. All of these issues will get
15 resolved at some point, but this particular motion is
16 defective on the procedural basis that the Lex Claims lawsuit
17 is just the improper vehicle to resolve it.

18 And the Court does not need to reach the issue in
19 connection with denying this motion to lift the stay, rather
20 Your Honor may one day or the First Circuit may one day ask
21 the Puerto Rico Supreme Court for legal advice.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. DUNNE: Dennis Dunne from Milbank Tweed on behalf
25 of Ambac. I'm not going to repeat what you heard already from

1 the objectors. I'll just make a couple points.

2 THE COURT: But you do have to talk a little slower.

3 MR. DUNNE: Yes. But the green light hasn't turned
4 yellow yet, so I guess I have no excuse for the speed.

5 I want to get to two points, really. One is I think
6 it's odd and kind of telling at the same time that the movants
7 here are seeking to direct the prosecution of a claim that
8 they were not the plaintiffs for pre-petition and that we
9 believe is now not capable of being prosecuted by that
10 plaintiff group because it's an asset of the Commonwealth.

11 So why are they doing it? They're doing it because I
12 think they really dislike what's on the next docket item,
13 which is the protocol motion with respect to the Oversight
14 Board.

15 And they hope if you granted this, that would
16 completely obviate the need for any litigation on the issue
17 here. But that's not a reason to do this, Your Honor. We
18 think that as we put in our paper here, it's the
19 constitutional -- principle of avoidance. There are a number
20 of threshold issues there that could resolve that litigation,
21 failure to state claim, some other preliminary issues. And I
22 think the case was pretty clear that it's only when a
23 constitutional issue remains left standing that you should
24 deal with it.

25 And maybe as Mr. Kirpalani said, at that point in

1 time you might decide to certify it. And I do want to be
2 clear on that, Ambac, we're not saying it's never ripe for
3 certification. It might be, but we have to go through the
4 procedures and requirements. And when we get to the place
5 where the circumstance is warranted, we should.

6 Last point. I disagree with the notion that
7 certification would somehow catalyze settlement. And this
8 could be a theme you hear from me, and I suspect others, on a
9 number of points. Settlement is unlikely to occur here in
10 this litigation, in other litigations, without development of
11 the fiscal plan.

12 As Judge Houser and her mediation team is going to
13 hear, I suspect from a number of parties on July 12, we need
14 transparency, accountability and more importantly, an open
15 attitude of engagement with respect to the fiscal plan.
16 Before we have the cornerstone of the size of the pie that
17 usually precedes dividing up the pie.

18 Right now we want to jump to divvying up the pie when
19 we don't know what the pie is. We'll hear more about that
20 later, but there's a little bit of a sequencing issue here.
21 The issue has come to the forefront because of the nature of
22 what happens once we have Title III cases, and we're losing
23 sight of kind of the underlying financial predicates that we
24 need to develop more.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 The gentleman in the front row who was standing up
3 before, and the gentleman coming up now will come up after.
4 I'm sorry. I'll let the gentleman with the blue tie speak
5 first and then the gentleman with the purple tie speak after
6 that.

7 MR. RIEMAN: Thank you, Your Honor. Walter Rieman,
8 Paul Weiss, Rifkind, Wharton & Garrison for the Ad Hoc Group
9 of General Obligation Bondholders in opposition to the motion.

10 As has been noted, my clients are the plaintiffs in
11 the Lex Claims litigation. And while we do not agree that we
12 lack standing to raise the underlying disputed issue as a
13 result of the Title III filing, as has been said, we do agree
14 that the Lex Claims litigation is not an appropriate vehicle
15 for certification of this issue.

16 Lifting the stay as the movants request would
17 inappropriately remove from this Court's control the question
18 of whether and how to certify issues to the Supreme Court of
19 Puerto Rico, and again would remove from this Court the
20 ability to define those issues.

21 The motion is a motion to lift the stay. It's not a
22 motion for certification. So the consequence of granting a
23 motion would be that Judge Besosa who's presiding over the Lex
24 Claims litigation prior to its being stayed would be asked to
25 decide whether certification should occur.

1 Presumably, he wouldn't be told that certification
2 would be useful to resolve any issue pending before him. No
3 one contends that the stay should be lifted in Lex Claims with
4 respect to any other issue. And indeed, the claims as framed
5 in the Lex Claims amended complaint have been entirely
6 overtaken by events.

7 So instead, Judge Besosa would confront the
8 completely puzzling question of whether to certify an issue to
9 the Supreme Court of Puerto Rico, not because it would be
10 useful to resolve Lex Claims, but instead because it would be
11 useful to resolve issues pending before Your Honor in these
12 Title III proceedings.

13 With respect, that's just crazy. And then if
14 certification were to occur, which we think it would not, the
15 Supreme Court of Puerto Rico would then be required to apply
16 its jurisprudence considering whether to accept certification
17 to a request emanating from Judge Besosa, but implicating
18 issues pending the Title III proceedings before Your Honor.

19 That seems to us as similarly crazy and similarly
20 likely to result in the objection of a request for
21 certification at that level. Your Honor's about to hear the
22 COFINA procedures motion.

23 There will be opportunities for parties to request
24 certification of issues to the Supreme Court of Puerto Rico in
25 an orderly way, pursuant to whatever procedures Your Honor

1 decides to put in place for resolution of the issues
2 implicated by the COFINA procedures motion.

3 Opportunities may arise in the context of the
4 interpleader proceeding involving the Bank of New York, or
5 from adversary proceedings that have yet to be filed. But it
6 is Your Honor that should remain in control of these issues.
7 Your Honor may want to consider if a request for certification
8 is made from this Court, the effect certification would have
9 on the pace of and scheduling of the action before this Court,
10 and on the prospects for settlement. We do not agree that
11 granting this motion would advance the settlement process and
12 we think that it will throw resolution of this issue into
13 procedural chaos.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 And the gentleman in the purple tie.

17 MR. GORDON: Thank you and good morning, Your Honor.
18 For the record, my name is Robert Gordon of Jenner & Block on
19 behalf of the Official Committee of the Retired Employees of
20 Puerto Rico.

21 THE COURT: There's a total of just under two minutes
22 left in this segment, so --

23 MR. GORDON: Which feeds right into what I was going
24 to say, which is in the interest of efficiency, we choose to
25 just rely upon the pleading we filed. I realize we did file

1 something with respect to this matter, but I think all the
2 other counsel have articulated the issues very well in
3 opposition of the motion and maintaining the matters before
4 this Court.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Gordon.

7 MR. SOSLAND: Thank you, Your Honor. Martin Sosland
8 of Butler Snow on behalf of Financial Guarantee Assurance
9 Corporation.

10 THE COURT: Good morning.

11 MR. SOSLAND: Although Mr. Dunne and I may be on
12 opposite sides of the underlying substantive dispute, but we
13 oppose this motion for exactly the same reasons that Mr. Dunne
14 articulated, so I won't repeat them, only to say that we are
15 against the motion.

16 THE COURT: Thank you.

17 MR. TRUJILLLO: Good morning, Your Honor.
18 Maximiliano Trujillo. I represent a very small creditor.
19 It's an eminent domain creditor. But my motion to appear here
20 today is for just one point, that any motion to lift the stay,
21 unless the Honorable Court changes these rulings, is subject
22 to local rule 4001-B supporting that.

23 Who is the owner? What is the agreement? Was the
24 lien effectively perfected? And we don't have those documents
25 in this and other matters of stay of proceedings. So this is

1 a threshold issue that the Honorable Court should decide in
2 this and the other areas.

3 Now, there has been questions of Constitutionality
4 and the Fifth Amendment, and we -- possibly the retroactive
5 effect of Puerto Rican law. But there is a -- there are
6 Puerto Rican laws that predate all contracts here that would
7 be able to be used by this Honorable Court if that happens to
8 PROMESA or whatever. And that's the civil code of Puerto Rico
9 and the law of judicial procedures, because the civil code is
10 from 1890, and the laws of judicial procedures pertaining to
11 the composition of debts is of 1885.

12 THE COURT: Thank you, Mr. Trujillo.

13 MR. DESPINS: Ten seconds, Your Honor. Just the
14 committee supports the denial of the motion on the basis that
15 it's premature at this time.

16 THE COURT: Thank you.

17 MR. BENTLEY: Three quick questions, Your Honor.
18 Mr. Bienenstock cited PROMESA 306(b). That's a provision that
19 says this Court, the Title III Court has exclusive
20 jurisdiction. As we point out in our reply at pages five and
21 six, the Bankruptcy Code has an identical exclusive
22 jurisdiction provision. The First Circuit nevertheless has
23 felt free to certify issues of state law to state courts.
24 This Court can do the same.

25 Secondly, the gentleman with the blue tie, Mr. Rieman

1 for the GOs said it would be crazy to ask Judge Besosa to make
2 a certification decision that really hinges heavily on issues
3 of the cases before Your Honor.

4 Your Honor, we believe there is a lot to be said for
5 you to make that decision and not Judge Besosa for that
6 reason. So we would not object if Your Honor is inclined to
7 transfer the Lex Claims case to this Court, pursuant to
8 Section 306(d)(3) of PROMESA. We would have no objection to
9 that.

10 Finally, we have heard no reason, we have heard no
11 rebuttal, no answer to why it's not urge -- no one's explained
12 why it's not urgent to get a ruling on this pivotal issue
13 soon. Why it's not urgent to the effective management of
14 these cases, to avoiding a Federal Court having to rule on
15 this issue or the effectiveness of the mediation.

16 We've heard technical issues raised by parties who
17 appear to be afraid of how the Puerto Rico Supreme Court may
18 rule. We've heard nothing Your Honor cannot take care of and
19 resolve if Your Honor agrees that that's the best path
20 forward.

21 THE COURT: Thank you.

22 MR. BENTLEY: Was I under a minute? Almost.

23 THE COURT: Yes. You got there. All right. Thank
24 you.

25 I have considered carefully the submissions that were

1 made before today and listened carefully to the argument made
2 here today.

3 For the following reasons, the motion for partial
4 lift of the stay of the Lex Claims litigation is denied.
5 Title 11, Section 362(d) of the United States Code made
6 applicable in these proceedings by PROMESA, Section 301 as
7 codified at Title 48, Section 2161 of the United States Code
8 permits this Court to lift the automatic stay imposed by the
9 filing of these Title III cases in a separate -- in a separate
10 action for cause. Citing In Re: Sonnax Industries, Inc., 907
11 F.2d 1280 at 1286, a Second Circuit decision from 1990, the
12 movants rely on four factors to show that there is cause to
13 lift the stay.

14 First, whether relief would result in a partial or
15 complete resolution of the issues.

16 Second, the interests of judicial economy and the
17 expeditious and economical resolution of litigation.

18 Three, whether the parties are ready for trial in the
19 other proceedings.

20 And four, the impact of the stay on the parties and
21 the balance of harms. Similar factors are used to evaluate
22 lift stay motions in the First Circuit, see Unanue,
23 U-n-a-n-u-e, hyphen, Casal, C-a-s-a-l, 159 B.R. 90, District
24 of Puerto Rico, 1993, affirmed 23 F3d 395, First Circuit,
25 1994.

1 Having carefully considered all of the submissions
2 and arguments, the Court concludes that cause to lift the stay
3 has not been shown in this case.

4 The premise of the Mutual Fund Group's motion is that
5 there is a need for speedy determination of whether COFINA's
6 SUT revenues are available resources of the Commonwealth under
7 the Constitution of Puerto Rico. That this determination
8 should be made by the Supreme Court of Puerto Rico in the
9 first instance, and that the stay of the Lex Claims
10 litigations should be lifted solely as to that aspect of the
11 pending motion, which requests certification of a question to
12 the Supreme Court of Puerto Rico to allow that to occur.

13 This premise suffers from inherent problems that make
14 it speculative at best, that the relief sought would result in
15 a partial or complete resolution of the issues raised in these
16 Title III proceedings.

17 The result that the Mutual Fund Group seeks to
18 achieve a ruling by the Supreme Court of Puerto Rico on the
19 status of COFINA's revenues is not a certain outcome of the
20 lifting of the stay.

21 Judge Besosa would first have to grant the pending
22 certification motion, which would require that he address
23 first the question of whether the Lex Claims plaintiffs still
24 have standing sufficient to support subject matter
25 jurisdiction in the litigation following the commencement of

1 | these Title III proceedings.

2 | The objectors here argue that there will be a
3 | significant and colorable challenge to the Lex Claims
4 | plaintiffs' standings to proceed with their suit, in light of
5 | the fact that the Oversight Board is now the sole
6 | representative of the Commonwealth and any property of the
7 | Commonwealth, including its legal claims.

8 | This argument is not a frivolous one, and the federal
9 | court is always obligated to determine whether it has subject
10 | matter jurisdiction. Even were Judge Besosa to conclude that
11 | the Court still has subject matter jurisdiction over the Lex
12 | Claims litigation, the question of -- the issue of whether the
13 | question presented by the certification motion is a pure
14 | question of Puerto Rico law is a complicated one that's
15 | highlighted by several objectors.

16 | Following the filing of the Title III cases, PROMESA
17 | governs the property of the debtors, including both the
18 | Commonwealth and COFINA. It is not at all clear that the
19 | question that the Mutual Fund Group seeks to have asked and
20 | answered is one that would be susceptible to a determination,
21 | as a pure matter of Puerto Rico constitutional law.

22 | But rather is one that certainly arguably, and
23 | possibly likely, involves the interplay of federal law, namely
24 | PROMESA, and provisions of the Puerto Rico Constitution.

25 | The mixed nature of the question at issue highlights

1 a further potential road block, whether the Supreme Court of
2 Puerto Rico would accept the certified question. Rule 25(b)
3 of the Supreme Court of Puerto Rico makes clear that the Court
4 is unlikely to accept a mixed question on certification.

5 Thus, if the Supreme Court of Puerto Rico were to
6 view the certified question as one that could not be answered
7 solely by looking to Puerto Rico law for any reason, it would
8 decline to accept the question.

9 That rule, 25(b), states plainly that the Court would
10 not accept a mixed question that involves aspects of federal
11 law and aspects of Puerto Rico's local law. The objectors
12 made clear that the Supreme Court of Puerto Rico would, at the
13 very least, be confronted with arguments that the certified
14 question is exactly such a mixed question.

15 Accordingly, the Court concludes that the movants
16 have not shown that the relief requested would likely result
17 in a partial or complete resolution of the issues, nor do the
18 remaining factors movants identify counsel in favor of lifting
19 the stay.

20 The interests of judicial economy do not favor
21 piecemeal litigation of issues that are central to these Title
22 III proceedings in a variety of courts.

23 This Court has pending numerous adversary proceedings
24 and motion practice that seek, in various ways, to address the
25 very issue raised in the certification question, and this

1 Court is fully capable of engaging the issue in an appropriate
2 manner at an appropriate time.

3 Furthermore, the Lex Claims parties have not fully
4 briefed the certification motion and are not better positioned
5 to litigate that issue than the parties to the Title III
6 proceedings, and so the speedy resolution argument for cause
7 is one that is not terribly persuasive.

8 Finally, the balance of harms does not tilt in favor
9 of the movants. The movants have not demonstrated a
10 particular harm that they are likely to suffer in the absence
11 of their requested relief and acknowledgement that they are
12 not contending that adequate protection is an issue in their
13 argument for relief from the stay.

14 Accordingly, the Court concludes that there is no
15 cause to lift the stay on that aspect of -- on any aspect of
16 the Lex Claims litigation and the motion is denied.

17 Now, in passing, the movants raised in their papers
18 and did just now a request to transfer the Lex Claims
19 litigation into the Title III proceedings as an adversary
20 proceeding.

21 That request is denied at this time without prejudice
22 to motion practice on regular notice or a stipulation seeking
23 such relief. In this connection, the parties are directed to
24 consider the issue of subject matter jurisdiction and whether
25 and to what extent the motion practice pending in Lex Claims,

1 if it were to become an adversary proceeding, would need to be
2 modified or withdrawn in light of the changed circumstances.
3 So once again, that motion is denied. Thank you.

4 And so now let us move to the Commonwealth COFINA
5 procedures.

6 I'm sorry. Hold on just one second.

7 So we will do the timer here in 15 minute segments
8 with the yellow light at seven and a half minutes, rather than
9 30 minute segments.

10 Do I gather that we're going to start with opposition
11 to the motion?

12 MR. MOERS MAYER: Yes, Your Honor. Tom Mayer on for
13 Kramer Levin. After discussing with Mr. Bienenstock I believe
14 just about every other party that has to be heard on this
15 matter, the thought was the objectors would go first. Since
16 the Mutual Fund Group's objections was the most vehement of
17 the objections, I would start, and then the objectors would
18 follow. And then Mr. Bienenstock and other supporters of the
19 motion would go last.

20 THE COURT: Very well. Go ahead, sir.

21 MR. ROSENBERG: Andrew Rosenberg from Paul, Weiss,
22 Rifkind, Wharton & Garrison. In terms of the 15 minutes, I
23 think we can certainly try, and everyone will be brief, but I
24 think there's eight oppositions to this. And we have come up
25 with an order.

1 We're toward the end. My remarks are probably only
2 three minutes or so, but we do want to make sure that
3 everybody is given an opportunity to be heard, which may be
4 difficult in 15 minutes with eight parties.

5 THE COURT: I will bear that in mind. I'm going to
6 keep the clock set for 15 minutes. And, you know, that is an
7 incentive to be nonduplicative and considerate of each other,
8 and I will also be considerate of the overall circumstances
9 when the light reaches red.

10 MR. ROSENBERG: Brevity is our forte.

11 THE COURT: Thank you. Mr. Mayer.

12 MR. MOERS MAYER: Thank you, Your Honor. The Mutual
13 Fund Group objects to the Oversight Board's own procedural
14 motion, to cut straight to the chase, because it is designed
15 to give away dedicated sales tax that would otherwise pay us
16 in full, and I will show why that is.

17 First, let's deal with the Oversight Board's retained
18 control. Assume that the COFINA agent does a great job. It
19 goes out, whoever he or she is, and it litigates and
20 negotiates and brings back a settlement of 90 percent goes to
21 COFINA.

22 Does that settlement become effective? No, it does
23 not, because the Oversight Board can veto it. And that
24 settlement does not fund the Oversight Board's fiscal plan, so
25 of course the Oversight Board will veto it. So this, quote,

1 settlement procedure is a one-way ratchet.

2 If the settlement that is reached works, the
3 settlement will get approved by the Oversight Board, and if it
4 doesn't, it won't. And then the Order originally submitted --
5 Oversight Board approval is game over. There wasn't even a
6 way to get to this Court for somebody to object if the
7 settlement was good, bad or indifferent.

8 Second, let's look at what the COFINA agent does.
9 And our papers talk about the limits on the COFINA agent's
10 situation. What incentive does the COFINA agent have to do a
11 good job? It doesn't get paid more or less.

12 What compulsion does the COFINA agent have to do a
13 good job? Well, the Court orders the COFINA agent to do a
14 good job. That's basically what the proposed Order does. It
15 says -- the Court signs where it says, each agent shall
16 endeavor, to the best of the agent's ability, to litigate and
17 negotiate.

18 And that is the spark, if you will, of -- well, Your
19 Honor, that's a receiver. A receiver is an officer of the
20 Court that does what the Court tells the receiver to do. It's
21 not responsible to anybody else.

22 And that's what the Oversight Board is asking this
23 Court to appoint in its Order appointing this agent, and
24 that's something that this Court cannot do under Section
25 105(b), which is incorporated in connection with PROMESA.

1 The only response the Oversight Board has to that is,
2 well, no, it's not a receiver because a receiver receives
3 revenues. Well, that's not true.

4 Your Honor's been on the bench 20 plus years, I
5 think, and I suspect you've seen more than one receiver
6 receiving property and responsible for property that receives
7 revenue. This is a receiver, and the Court retains no
8 authority for this Court to appoint it.

9 Now, finally, I want to talk about denial of adequate
10 protection. This is the counter example. Let's assume that
11 the COFINA agent determines that it has only a 25 percent
12 chance of winning.

13 Now, we think that's crazy. We do think we're going
14 to win. We don't think there's a federal issue. We just
15 argued that. We obviously hope that the Puerto Rico issues
16 would be determined our way, otherwise we wouldn't be here to
17 get to the Puerto Rican support.

18 But let's assume the COFINA agent says that in its
19 judgment, it's a 25 percent chance of winning. So COFINA
20 starts out with a five percent interest in the sales tax.
21 That's all it's got. So the COFINA agent gives away its five
22 percent, then it gives away all of the sales tax and it gives
23 away a big chunk of sales tax that goes to pay the seniors.
24 And under the settlement procedures, this is all sanctified in
25 advance because the Order commands, directs, approves the use

1 of the Credit Lyonnais standard for determining when to settle
2 and when not.

3 And again, of course if its 25 percent goes to COFINA
4 and 75 goes to Commonwealth, the Oversight Board will love
5 that. That's probably good enough -- I don't know, I haven't
6 done the numbers -- to make their fiscal plan work. That's
7 the agenda of the settlement procedure.

8 It's to settle the litigation mostly, if not
9 entirely, with sales tax that would otherwise pay junior
10 bondholders in full. And Credit Lyonnais did not deal with
11 this situation at all. Credit Lyonnais ruled on the fiduciary
12 duties of the Board of a for-profit corporation with respect
13 to a lawsuit that hadn't been pledged to anybody.

14 It didn't deal with a lawsuit that had been pledged
15 or where the pledger's interest was minimal and any settlement
16 will be zero. And it doesn't provide any support or guidance
17 as to how an agent for a municipal pass-through entity with no
18 duties to anyone should behave.

19 Because that is all COFINA is, a pass-through entity,
20 it is set up to secure the COFINA seniors and COFINA juniors.
21 So this agenda of creating a settlement procedure to fund the
22 Commonwealth's budget with COFINA's tax revenues under a
23 procedure, which makes it difficult to impossible to challenge
24 the parties with real money at stake, that denies us adequate
25 protection. We can't accept that an agent would give away our

1 credit collateral on a Credit Lyonnais standard.

2 And it's also the agenda of the seniors. The seniors
3 have objected to the settlement procedures, but they're okay
4 so long as they control who does the settlement, whether it is
5 their agent who does it. And I expect that you're going to
6 hear that they're senior, we're junior, we lose. That's the
7 way the world works.

8 Well, that's not true. As we stand here today, we
9 believe we have a lien that will pay us in full, that will be
10 validated, and we are entitled to adequate protection of that
11 lien.

12 And as -- Your Honor, a long time ago ran into a very
13 odd case involving similar questions in West Point Stevens.
14 As the 2nd Circuit said in West Point Stevens, adequate
15 protection is a statutory right that is taken very seriously,
16 and a secured creditor will not be found to have waived its
17 right to adequate protection unless there is more than an
18 ambiguous waiver of that right.

19 Well, Your Honor, in the trust agreement, there is no
20 way to rule that adequate protection is not even mentioned.
21 With respect to our lien, Article 10 of the trust agreement,
22 which is not subject to the seniors, says the lien can be
23 waived on the grounds of consent.

24 So it isn't constitutional, and we don't think it's
25 fair to empower an agent under a Credit Lyonnais standard to

1 give away collateral and leave COFINA juniors with nothing in
2 order to fund the Commonwealth's budget.

3 So we urge the Court for those reasons and others set
4 forth in our papers, including the case in controversy
5 requirement, which the Oversight Board does not believe even
6 applies, to deny approval of those procedures, which in our
7 view sets up a fake litigation with fake fiduciaries as a
8 pretext for taking collateral, which would otherwise pay us in
9 full.

10 Thank you.

11 THE COURT: Before you sit down, I have one question
12 to you. It seems to me that one possible reading of the
13 construct proffered by the Oversight Board insofar as it
14 purports to focus on the agent maximizing the amount of money
15 that comes to COFINA, as opposed to serving the interests of
16 particular interest holders in COFINA bonds, is that the issue
17 of how whatever money is collected for COFINA would be
18 determined -- the issue of how it would be divided among the
19 COFINA bondholders would be determined either by settlement or
20 by resolution of the legal issues.

21 It's just a pot that might be smaller or bigger. And
22 so I think I hear you saying that unless the pot is the
23 maximum pot, that would certainly leave money under the
24 ordinary application of the waterfall for your clients. Your
25 clients are necessarily out of the money under this proposal.

1 So long-winded question, not as clear as I'd like it
2 to have been, but am I -- do you think that I'm reading it
3 inappropriately where I read it to say if there's a pot of X,
4 then there's a separate exercise in settlement or litigation
5 as among the COFINA bondholders to determine whether the
6 junior COFINA bondholders get their --

7 MR. MOERS MAYER: I think you're reading their
8 position correctly, Your Honor, but I think it's quite
9 disingenuous. If, in fact, as we fully expect will play out,
10 should the Settlement Procedures Order be granted and should
11 matters evolve as they clearly are engineered to evolve --
12 let's keep it simple. Let's assume it's half juniors and half
13 seniors, and the COFINA agent says, I'm going to settle for 50
14 percent. The result of that settlement is going to be a de
15 minimis recovery for the juniors. But it may fund the
16 Commonwealth's budget, so that works for the Commonwealth,
17 works for the Oversight Board, works for everybody except the
18 people who have a lien on that last 50 percent.

19 And the way the determination is made, does it make
20 sense to give it up or not, it has nothing to do with
21 protecting our 50 percent. It has to do with a corporate
22 fiduciary standard that has nothing to do with protecting our
23 collateral.

24 And I submit, there's a difference between telling a
25 board how to exercise its fiduciary duties to an entity and

1 protecting someone's collateral, especially when the entity
2 itself has no economic interest in what is being settled.

3 THE COURT: Thank you.

4 Again, let's aim for nonduplicative. You see there's
5 four minutes on the clock. We'll manage the clock, but let's
6 try to be as efficient as possible.

7 MR. POLKES: I appreciate it, Your Honor. We have a
8 very different position. This is Jonathan Polkes from Weil,
9 Gotshal for National Guarantee. And I can tell Your Honor on
10 behalf of us, and I speak for the other senior holders, we
11 actually did view the suggestion as one of the agents as a
12 positive development overall in connection with this. Our
13 issue concerns the independence of that agent for COFINA in
14 particular.

15 You can't be -- this is the camel's nose in the tent.
16 The fact of the matter is, is that whatever the Oversight
17 Board says in terms of they're not a not-for-profit
18 institution and have everybody's best interest at heart, there
19 is a very fundamental conflict here.

20 The fiscal plan is the conflict. The fiscal plan
21 that was submitted by the Oversight Board on behalf of both in
22 this Title III, the Commonwealth in its Title III presupposes
23 raiding COFINA funds. And the Oversight Board simply can't be
24 in a position to control what happens with regard to both of
25 those things if it is going to satisfy its duties with each

1 separate debt. And we take it they're acknowledging that
2 effect is good for them.

3 The same needs to be with an appointment of an agent,
4 but the agent, it has to zealously protect COFINA's interest
5 and has to zealously protect COFINA's interest and maximize
6 the return for that particular debtor. And the Oversight
7 Board can't do that and at the same time work to get the best
8 for the Commonwealth.

9 The specific issue that we have in mind really, the
10 most important one is the retained veto right of settlement.
11 That was raised already. There are really very specific
12 issues in disagreement here. They can't have that. They
13 can't say, we're going to give -- appoint an agent who can
14 zealously protect the interest of COFINA, but at the same time
15 we get to torpedo the agent. That makes the agent really just
16 cosmetic. And it's not okay. They have to be really
17 independent.

18 For the same reason, they shouldn't have any right to
19 appoint or nominate or name in any other way appoint an agent.
20 It's inappropriate atmospherically. It's inappropriate in
21 terms of appropriate process, inappropriate as a practical
22 matter. This agent has to -- we need, the creditors need a
23 debtor representative whose sole independent position is to
24 zealously try to maximize recovery for that estate.

25 And I must say that even after the fact that's been

1 | agreed to by the Oversight Board, they've agreed that the duty
2 | of this agent will be to maximize the recovery on behalf of
3 | the debtor. But the only way that can happen is if the agent
4 | is not beholden in any way to the Oversight Board with this
5 | agreement.

6 | And I just want to emphasize one thing and I'll
7 | finish with this actually. This conflict is very real. The
8 | fiscal plan presupposes raiding COFINA's funds, otherwise, it
9 | doesn't work. It doesn't make sense. I must say there's a
10 | crisis of confidence on our side of the table. We don't
11 | believe that. We don't believe that. I don't think anyone up
12 | here does. And that's going to become an issue in the
13 | mediation.

14 | Judge Houser, I think that's something you will hear
15 | very often. And we have filed an interpleader action,
16 | discovery request, plan of work, fiscal plan, and have been
17 | completely rebuffed. The objections are based on executive
18 | privilege, understanding that the Oversight Board submits a
19 | fiscal plan stating we need emergency relief, but we're not
20 | going to let you look into any of the assumptions of the
21 | fiscal plan.

22 | So this conflict couldn't be more real. The only way
23 | this agent process works is if people have faith in the
24 | integrity of the agent. And in that regard, the Oversight
25 | Board should have no say in who is selected and should not

1 retain any settlement veto rights at all.

2 Thank you.

3 THE COURT: But how do you get past case or
4 controversy if the Oversight Board, wearing its COFINA hat,
5 doesn't have to own at least the litigation position? I can
6 see there are lots of issues with this proposal. One of them
7 that I see is that maybe litigation with the specific brief is
8 one thing that binds COFINA and the other binds the
9 Commonwealth, the opposite position. It might be something
10 that needed to be handled differently from the pool of
11 participants in a settlement negotiation and from authority to
12 approve or disapprove a settlement.

13 Is there any -- do you see any daylight there, and
14 how would you -- how do I have a case or controversy if I'm
15 appointing litigants and telling them what to argue?

16 MR. POLKES: Fair enough. First of all, I think that
17 question, it's pointed to -- into the Oversight Board, a
18 question for them as much as us.

19 THE COURT: Yes.

20 MR. POLKES: Second, PROMESA -- in the statute, we
21 will have to try and figure it out as we go forward. I think
22 third of all, the authority of PROMESA does help. I mean,
23 this is for -- I understand this has been foreseen. I can't
24 imagine why else there's the ability or -- having foreseen,
25 you could appoint an agent and give them whatever authority

1 the Oversight Board itself has.

2 And the fourth thing is perhaps the Oversight Board
3 could continue to have a voice. In other words, it's not like
4 they have to be fully recused from these proceedings as we go
5 forward. They can file briefs, can have a seat at the table.

6 To us, the important thing is that the debt, the
7 COFINA debtor itself have a truly dedicated representative
8 whose sole concern is preserving the assets of the COFINA
9 estate.

10 THE COURT: Thank you.

11 MR. POLKES: Thank you, Your Honor.

12 THE COURT: Okay. We're sort of at 17 minutes.
13 We're going to reset the clock at ten minutes and ask that
14 everyone who remains, try to stay in those ten minutes.

15 MR. KIRPALANI: Thank you, Your Honor. Susheel
16 Kirpalani from Quinn Emanuel on behalf of the COFINA Seniors
17 Bondholder Coalition.

18 As Mr. Polkes mentioned on behalf of National, we
19 worked very hard in the face of this motion to try to organize
20 ourselves, at least among the COFINA senior representatives.
21 And the Coalition, along with National, along with Ambac, did
22 provide independent objections, but that -- all proposed the
23 exact same proposed order that we believe would resolve our
24 objections.

25 Yesterday, after everything else had been filed, I

1 took some time to go through it. I'm sure what your team and
2 staff has done. If you read everything that was filed, and
3 there is a way to synthesize, so I'm going to do my best to
4 try to do that, the Oversight Board says November 1st is a
5 real issue for the Commonwealth and COFINA. There are a lot
6 of creditors in this courtroom who dispute that. We frankly
7 don't have any idea, which is why we took a slightly different
8 approach in terms of what our concerns are with respect to the
9 fiscal plan.

10 Mr. Despins stood up earlier and said the official
11 unsecured creditors committee is just getting involved and he
12 just got hired two days ago. He needs time to weigh in on
13 that. So what we put in our proposed Order list that November
14 1st is the date. That was the date that was requested by the
15 Oversight Board.

16 Your Honor will have the opportunity to control its
17 own Order and revisit them based on subsequent events if
18 someone brings to the Court's attention evidence that, in
19 fact, that allegation of November 1st need was not
20 well-founded or if circumstances have changed. So we don't
21 think that's really a gating issue with our proposed Order.

22 The mutual funds and UBS said forcing litigation to
23 be commenced within ten days in this court is a bit of a
24 manufactured process, and that raised Article III concerns.
25 Your Honor may notice that again, we've changed where the

1 court is. It says the appropriate court.

2 And we also would eliminate the ten-day period that
3 also addresses the unsecured creditors committee's concern
4 that this is moving too fast and they can't catch up to the
5 train.

6 I think for purposes of the protocol, what the
7 Oversight Board did was take what Congress gave them and said,
8 you have legal authority over two distinct entities, and you
9 have legal authority under federal law to appoint agents. But
10 after that, the agents should decide when they will be ready
11 to bring the litigation.

12 They have the November 1 date as a ticking clock,
13 unless they determine that that's not a real date. And they
14 can't do that. You don't need to prewire, if you will, every
15 single issue of when litigation has to be commenced and what
16 court will ultimately decide that. And we think that all of
17 those issues can be addressed with our proposed Order.

18 We do believe the COFINA senior representatives
19 should have a say as to who the agent for COFINA is. With all
20 due respect to Mr. Mayer, they are the subordinated
21 bondholders. Their documents are clear, that following the
22 amendment, the senior bondholders control all remedies, and
23 this would fall within that context, Your Honor.

24 And with that, I would pass the podium to others for
25 more time to speak.

1 THE COURT: Thank you.

2 MR. DUNNE: May it please the Court. Dennis Dunne on
3 behalf of Ambac. I'm not going to repeat anything that was
4 said. I just want to be clear that Ambac filed an objection,
5 because we do believe that the proposed procedures are legally
6 infirm.

7 The Oversight Board seems to ignore an asymmetry of
8 rights between the Commonwealth and COFINA. On the
9 Commonwealth side, you clearly have a contingent litigation
10 claim that is an asset of the Commonwealth. It's kind of
11 valueless until proven up.

12 On the other side, in the COFINA box, you have
13 legislation that granted property rights in the SUT, granted
14 liens to creditors who are all up here. There's actually
15 legislation that says the SUT shall not constitute available
16 resources.

17 So on the COFINA side, people are happy with the
18 legal landscape that exists today, and those secure creditors
19 are capable of defending themselves from any attack by the
20 Commonwealth.

21 But notwithstanding the fact we believe the proposed
22 procedures are legally infirm, we support the proposals that
23 are set out in the proposed Order we attached, which are the
24 same ones that Mr. Kirpalani referenced and counsel for
25 National referenced as well.

1 But that's primarily the one which we would be in
2 support, as we believe otherwise, as the proposed procedures
3 were originally reflected in the motion, they're legally
4 infirm and should not be approved.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 MS. HALSTEAD: Good morning, Your Honor. Ellen
8 Halstead for Cadwalader, Wickersham & Taft on behalf of the
9 Assured Guaranty Corporation, Assured Municipal Corporation.

10 We made two limited objections to this motion. The
11 first, I believe that I've resolved with Mr. Bienenstock, was
12 asking for notice and approval by the Court of any settlement.
13 And I believe that Mr. Bienenstock has agreed to include what
14 we suggested in our proposed order in paragraph J.

15 THE COURT: Yes. That does seem to be reflected in
16 the Reply.

17 MS. HALSTEAD: Thank you, Your Honor.

18 Our second objection is that the Commonwealth and
19 COFINA dispute does not need to be resolved by November 1st.
20 And all that we would suggest in order to resolve that
21 objection would just be to strike that from paragraph 2-G.

22 That's an artificial deadline for resolution of the
23 dispute. And as set forth in our papers, there are much more
24 dominant and larger issues in these cases that need to be
25 resolved before a plan of adjustment can be confirmed.

1 And I think other people have mentioned the
2 Commonwealth's recent liquidity projections by the
3 Commonwealth show they have 850 million dollars of surplus,
4 and that just highlights there that there's no need for this
5 November 1st deadline.

6 And I just want to address one other point that the
7 debtors raised in their reply. Mr. Polkes and Mr. Dunne have
8 already addressed points regarding the fiscal plan. In their
9 reply, the debtor said, in relying on Section 106(e), and they
10 argue that the fiscal plan cannot be challenged by any
11 creditor or reviewed by the Court.

12 And this position by the debtors is a complete
13 obstacle to any consensual resolution of these various
14 litigations that we have and could result in years of
15 litigation. And the essence of this position is no matter how
16 blatantly the debtors ignore PROMESA requirements, no court
17 can ever review what they did in the fiscal plan.

18 THE COURT: I understand that there's a fight about
19 the significance and impact of that provision. I really do
20 want to focus right now, and there are many people lined up
21 behind you, on the specific objections to the proposals. And
22 I think you've spoken to the principal ones that you've
23 raised.

24 And so unless there's something else that is
25 essential to this issue, I ask that you cede the podium.

1 MS. HALSTEAD: Thank you, Your Honor. I was just
2 replying to what they put in their Reply. Thank you.

3 THE COURT: Thank you.

4 MR. ROSENBERG: Andrew Rosenberg, Paul, Weiss,
5 Rifkind, Wharton & Garrison, Your Honor. I will try to be
6 brief. I will point out that we're the first pure GO holder,
7 and there's at least a couple of points that I do want to
8 make.

9 One is just to conclude possibly the discussion of
10 the artificial November 1 deadline. All that I think that
11 you've seen so far, Your Honor, is that there has been,
12 through the Center of Investigative Journalism, found certain
13 papers in litigation that revealed there was an additional 850
14 million dollars, and that certainly suggests that November 1
15 is an artificial deadline.

16 The only response that we have from the Oversight
17 Board before the Court I think is a footnote that the
18 Commonwealth told us they need that money, they're going to
19 spend it for something else. I don't think that's evidence in
20 any way, shape or form justifying the date.

21 Second, and I think more directly to the point about
22 the process here, however this is resolved, whether it's
23 through litigation or whether it's resolved from settlement,
24 there's ultimately going to be an inquiry in terms of the
25 settlement as to the fairness and litigation as to the ability

1 to bind everyone.

2 And this is ultimately going to look at adequacy of
3 representation. It's going to look at due process issues.
4 And what you've seen from the combined pleadings, and I looked
5 at them both together at the Oversight Board and AAFAF, and I
6 think they do need to be considered somewhat together because
7 one is the representative of the Commonwealth and one is the
8 Commonwealth.

9 They say three things: First, we have no fiduciary
10 duty to creditors whatsoever. Our only duty is to the people
11 of Puerto Rico. Whether that's true or not, that's their
12 position.

13 Two, they say they're free to violate contracts,
14 they're free to violate the Constitution. That's their
15 position, whether right or wrong.

16 Finally, their position, which you have certainly
17 heard enough of today, is that the debt service number in the
18 fiscal plan is unreviewable. It is what it is.

19 So the question is how does that square with adequacy
20 of representation and due process in this context? And I
21 think essentially what you find is that it fails the test.
22 You have a conflicted entity, and it says it's conflicted, the
23 Oversight Board, but it also appears to have no stake in the
24 outcome of how the creditors do, because it says it has no
25 duties to them.

1 And it says that they're going to divide up the debt
2 service number, whatever it is. Yet, that entity that has no
3 interest as to which creditor gets what, nevertheless is
4 picking their representative. It can veto any settlement that
5 they arrive at because the settlement can only come through
6 this Court with their motion, the way I read the pleadings.

7 And they get to determine the litigation schedule or
8 whatever works, I guess is best for the Commonwealth, for the
9 Board, but having nothing to do with the proper solution for
10 the creditors as to this money.

11 By now, in similar circumstances in bankruptcy, when
12 the Court approves a litigant for so-called estate causes of
13 action, it's not the conflicted debtor that, for obvious
14 reasons, that gets to pick the litigant, set the schedule, et
15 cetera. It's usually somebody else. And the Court ultimately
16 determines whether that's the right person and whether it
17 should go ahead, et cetera, not the conflicted debtor entity.

18 Here we have the control board picking the party that
19 litigates and reserving the right to essentially do the
20 settlement themselves or over their objection. The result of
21 this has to be whether there's a litigated outcome or a
22 settlement outcome, that there's going to be a cloud of
23 uncertainty.

24 The exact thing that they want to achieve, some type
25 of finality in all of this process in an artificially short

1 time will have the opposite effect, because there will be a
2 cloud, a due process cloud, an adequate state of
3 representation cloud over any result that arrives as a result
4 of this protocol.

5 We believe a lot of the sins, not all, but a lot of
6 the sins can be done by -- resolved certainly by greater Court
7 involvement and having the Court ultimately approve who the
8 representative is.

9 In our case, just to quickly mention, we believe it
10 has to be the GO Group. It's not, Your Honor, that we're
11 looking for more work. We have plenty to do already here.
12 But we are the only truly unconflicted party. This is no
13 disrespect to any of the insureds, but they wrap -- some of
14 them are more GO than others, but they all wrap other things.

15 And as to the official creditors committee, it is
16 largely composed of suppliers. Someone who has been mentioned
17 has a large tax refund. The Commonwealth has said over and
18 over again in public, and we intend to pay the suppliers in
19 full. We intend to pay the tax refunds in full.

20 The laboring units have a continuing relationship
21 with the Commonwealth. They depend on them for their
22 livelihood and jobs.

23 The one person they haven't said is -- they certainly
24 have not said they don't have intention to pay the GOs. We
25 are the ones who are not being paid. We have the greatest

1 interest in having this resolved properly.

2 Finally, and I'll conclude with this, Your Honor,
3 we've been studying this issue, I hate to say it, for two
4 years now. I think this is doubly important, given the
5 newness of other parties to this, that if you're going to have
6 any type of schedule suggested by the Oversight Board or the
7 Commonwealth to resolve this, quote, quickly, it certainly
8 makes sense to have the input of the parties that have been
9 looking at this for years as opposed to someone who's looking
10 at it for days, weeks, or not at all.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. ZAKIA: Your Honor, Jason Zakia, White & Case on
14 behalf of the Puerto Rico Funds this morning.

15 Two points in less than one minute. First, the legal
16 authorities cited by the Board for the appointment of this
17 agent is the agency delegation of PROMESA.

18 The Board has admitted, I think forthrightly, the
19 conflict of interest that they have standing on both sides.
20 And we do submit that it is impossible to cure that conflict
21 of interest by delegating to one of their agents as proposed
22 here.

23 Mr. Mayer used the term "fake fiduciary" -- I don't
24 think he used it lightly -- to set up a so-called fiduciary
25 and then tell them what to do, give them the time frame in

1 which to do it, and then say come back to me and we will
2 either bless or not what you do. It is no fiduciary at all.
3 So we would agree with Mr. Mayer and Mr. Dunne and others that
4 that is legally improper.

5 Also agreeing with Mr. Mayer and Mr. Dunne, it is not
6 necessary. The secured creditors on the COFINA side are able
7 and willing to protect their own interest. There is no need
8 for an artificial construct of a fake fiduciary to act
9 accordingly on our behalf.

10 But if Your Honor disagrees and decides -- this is
11 the second point I'd like to make. If Your Honor disagrees
12 and decides there is to be an agent, we would respectfully
13 disagree with the suggestion of several of the other COFINA
14 holders that you can somehow artificially exclude parties,
15 including my clients, from having a say on anything including
16 the appointment of that.

17 We set out in our argument and in our papers, and I
18 won't repeat it, but the bases put forth for excluding us from
19 the nomination process are spurious allegations made against
20 an affiliate of the manager of the funds that we represent,
21 which have been debunked and certainly do not provide any
22 legal basis for excluding us from this process, should Your
23 Honor decide to.

24 Thank you.

25 THE COURT: Thank you.

1 MR. GORDON: Thank you. Again, for the record,
2 Robert Gordon on behalf of Jenner & Block on behalf of the
3 Official Committee of Retired Employees of Puerto Rico. I
4 will be very brief, Your Honor.

5 The committee is a representative of the interests of
6 approximately 160,000 retirees in Puerto Rico. And according
7 to papers filed by the Commonwealth commencing these cases, it
8 indicates that the underfunding liability owed to public
9 pension holders is approximately 49 billion dollars, and that
10 does not include claims related to other post employment
11 benefits. As a result, the retiree committee is arguably the
12 largest single creditor constituency in this entire case.

13 With that background, Your Honor, we do not rise to
14 object, especially to a procedural motion or to the inclusion
15 of various parties in the process of selecting an agent or
16 engaging in litigation in a similar process. We only object
17 to the inexplicable omission of the retiree committee from
18 that process. The resolution of the Commonwealth COFINA
19 dispute could have a significant impact on the Commonwealth's
20 overall restructuring. As a representative of the single
21 largest creditor constituency in the Commonwealth's
22 restructuring, we submit it's simply inappropriate to exclude
23 the retiree committee from the process engaged and the other
24 processes proposing the motion.

25 The retiree committee on behalf of the retirees

1 absolutely should not be included in this process. This is so
2 not only because of the size of the claims, but also because
3 most of the 160,000 retirees are also residents of the island.

4 If the ultimate goal of this process is a legal
5 rehabilitation of a community known as Puerto Rico, it is
6 again, we submit, improper to exclude such a significant
7 constituency of that community in this process.

8 The proposed motion contemplates the inclusion of the
9 unsecured creditors committee and the selection of the agent
10 in the other processes. We do not object to their inclusion,
11 but again, we question the contrasting, the exclusion of the
12 retiree committee from this process.

13 THE COURT: Yes.

14 MR. GORDON: Considering also the fact the claims of
15 the retirees in the aggregate are significantly larger than
16 those comprised by the unsecured creditors committee, and the
17 interest of the retirees are certainly very compelling.
18 Therefore, Your Honor, our request is simple and straight
19 forward. If the Court grants the motion or is inclined to
20 grant the motion, we simply ask that the retirees committee be
21 included in the process of the Commonwealth agent, involved in
22 litigation and settlement processes as proposed in the motion.

23 THE COURT: Thank you.

24 There is one other person who wants to speak.

25 MR. DESPINS: Yes, Your Honor.

1 THE COURT: Each of you, one and a half minutes
2 because --

3 MR. DESPINS: Okay. Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. DESPINS: Luc Despins for the creditors
6 committee. I will address the key issue here, which is the
7 committee supports the procedures subject to the date of issue
8 that has been discussed, but on the basis that the committee
9 would be the Commonwealth representative.

10 There's been a suggestion by the Paul Weiss group
11 that somehow they should be the agent for the Commonwealth.
12 And, Your Honor, it is -- I'm saying this as politely as I
13 can, it's heresy to suggest that private parties should be
14 given essentially derivative standing to bring a claim on
15 behalf of the estate. That's never done, as you know. You
16 need fiduciaries.

17 And the fact that there are no GO bondholders on the
18 committee as of the moment, we owe a duty to all of them, and
19 therefore there is only one fiduciary which has the broadest
20 mandate, which is the creditors committee. And that's why we
21 should be the agent.

22 Thank you.

23 THE COURT: Thank you.

24 MR. SOSLAND: Your Honor, Martin Sosland with Butler
25 Snow on behalf of FGAC. FGAC's objection is slightly

1 different than what's been articulated by the other objecting
2 parties. We accept that. We believe that the real problem
3 with the procedure is it misdefines the issue. It misdefines
4 the problem.

5 The GO COFINA dispute is not, as Mr. Bienenstock
6 would suggest, a dispute between which one of these debtor's
7 property lies. This is a dispute about the rights of
8 bondholders that are derived both from underlying documents
9 and statutes, and under PROMESA itself, which provides in
10 201(b)(1)(n) what the fiscal climate is with respect to
11 relevant lawful priorities or lawful liens to the parties.

12 Now, whether you're a COFINA holder or GO holder, you
13 don't think the fiscal plan does that, which is why everyone
14 is objecting. The rights for the GO holders, which is where
15 FGAC is, as with Mr. Rosenberg's clients, our rights derive
16 not only from that statute, but in the COFINA Statute 16(b),
17 which we cited in our papers, which says that COFINA shall not
18 underline the rights of the holders in the GO debt. Not the
19 Commonwealth, the holders of the debt. Section 11 of RNB
20 adopted by PROMESA from Title 11 gives any party in interest a
21 right to be heard. We should be heard.

22 In this context, there are a lot of people involved.
23 The parties with the economic interest will not slow down the
24 resolution, but will actually speed up the resolution. And
25 we're all going to have to vote on the plans for adjustments.

1 Thank you.

2 THE COURT: Mr. Bienenstock, I will set the clock
3 initially for 20 minutes, but I want to make some remarks
4 before I start this clock that may or may not help to bring
5 this part of the discussion to a close earlier.

6 I believe that many of the points that have been made
7 are salient ones. I'm not convinced that they can't be
8 overcome, but I am and was, based on the submissions, fairly
9 well persuaded before coming in here today that the current
10 proposal has some fundamental problems.

11 And those include this question of what the real
12 relationship is between the debtors and the person of the
13 Oversight Board and these agents, the degree to which the
14 Oversight Board can instruct or preempt particularly on the
15 settlement side.

16 On the litigation side, and this goes to the case in
17 controversy issue, what the litigation brief of the agent is,
18 and whether the agent having been given a core principle to
19 pursue and defend to the death binds the debtor for all
20 purposes and all of the implications of those positions.

21 And going back to just the basic proposition that an
22 agent is authorized by PROMESA, I have a concern about the
23 language of 104(b).

24 Your proposal, and many of the variations on that,
25 that accept the notion that an agent is an appropriate

1 vehicle, seems to read 104(b) to say that it authorizes any
2 agent to take any action that the Oversight Board is
3 authorized to take by PROMESA.

4 But that provision of the statute says to take any
5 action the Oversight Board is authorized to take by this
6 section, which if it refers to 104 itself, doesn't intuitively
7 or clearly pick up all of the authority of the Oversight Board
8 under Title III.

9 There are other provisions in 104. There's one about
10 making contracts for people to do what the Oversight Board can
11 do. There's provisions about filing actions. But I would
12 invite some rethinking and perhaps -- well, anyway, some more
13 information about that.

14 And so to truly cut to the chase, as I've urged other
15 people to do, my intention today is to deny without prejudice
16 this particular application to urge the parties to work
17 together to come up with a different sort of proposal or
18 structure that deals with -- more clearly with the relational
19 issues, that deals with whether the same person or combination
20 of people should be at the settlement table as at the
21 litigation table, that deals with the statutory authority
22 point.

23 And I'm happy to be able to offer into this that the
24 mediation team is willing and available to facilitate those
25 efforts and discussions among the parties. So I figured it

1 was only fair to give you a preview, given the time and what's
2 been said.

3 MR. BIENENSTOCK: Thank you, Your Honor.

4 THE COURT: With gifts like this, you don't need
5 enemies, right?

6 MR. BIENENSTOCK: Martin Bienenstock of Proskauer
7 Rose for the Oversight Board.

8 In view of Your Honor's comments, which I do
9 appreciate, I'm trying to very quickly figure out what I can
10 say that would move things forward as opposed to simply find
11 out when Judge Houser is first available.

12 THE COURT: That's an important ingredient.

13 MR. BIENENSTOCK: But I think it's important to
14 respond to some of the issues, and also especially the issues
15 Your Honor raised so that there's an understanding on
16 everyone's behalf of the issues we have to solve.

17 First, in terms of choosing the agent, talking about
18 it in theory has been done today, and in the pleadings, is
19 much more difficult than talking about actual facts. And the
20 actual facts, as far as the Commonwealth's side, are that as
21 much as the statutory creditors committee for the unsecured
22 claim holders needs more time on a bunch of things, they real
23 fast determine that they should be the agent. And this was
24 Mr. Despina's lucky day, because the Oversight Board agrees.

25 It's a natural -- it's certainly a natural happening

1 of events in bankruptcy to turn over something like this to a
2 statutory committee chosen by the U.S. Trustee, obviously with
3 excellent counsel and other professionals.

4 So that leaves who should be the agent on the COFINA
5 side, which doesn't have a statutory committee for good
6 reasons. They're all saying they're secured, et cetera.

7 Now, there, Mr. Kirpalani has suggested to me four
8 choices, any one of which are people of spectacular
9 reputation, both for integrity and legal ability with their
10 law firms. I think maybe 11 didn't make suggestions to me,
11 because they were pursuing their stay motion.

12 But it really shouldn't be too hard to choose -- for
13 them to all come up with a bunch of potential agents and to
14 choose one. I mean, Mr. Kirpalani's list is a great start.

15 Now, we've agreed, as Your Honor saw in our reply,
16 we've agreed that any settlement would be subject to Court
17 approval. And that was our intention from the start, although
18 we understand how the parties read the proposed Order to see
19 that as a possibility and not a requirement, but we have
20 confirmed it's a requirement.

21 THE COURT: But is it true, though, that whether a
22 settlement proposal advances to the request for Court approval
23 is entirely in the control of the Oversight Board?

24 MR. BIENENSTOCK: Okay. That's exactly what I was
25 going to address, yes.

1 If the settlement is a pure, simple settlement, let's
2 say 50, 50, COFINA, Commonwealth, they split up the sales and
3 use taxes, we weren't worried about that type of settlement.
4 That would not be something that we would oppose or veto. We
5 just deal with it.

6 What the contemplation was --

7 THE COURT: Mr. Mayer says you deal with it because
8 it works for you. It works for the fiscal plan.

9 MR. BIENENSTOCK: It could be 90/10 in his favor, but
10 I'm saying we're not going to a pure settlement. How much for
11 one side, how much for the other is not what we were thinking
12 we needed a veto right for.

13 What we were thinking was there's going to be very
14 creative people on both sides and on the mediation side, and
15 it may not be a pure settlement in a couple of ways.

16 First, it's hard to settle simply how much money will
17 go into the estate and get creditor support, if you want
18 creditor support along with it, which would be nice, unless
19 the creditors know how that -- the money in the estate is
20 going to be distributed to them.

21 That's particularly on the COFINA side, the documents
22 may make that pretty clear. On the Commonwealth side, it also
23 may be clear, but still everyone would want to know what type
24 of plan of adjustment would go along with a particular
25 settlement.

1 That's number one, why our motion said that the
2 Oversight Board would participate in the mediation, because we
3 might be able to facilitate settlements that otherwise
4 couldn't be done. People just don't want to say 50/50 or some
5 other ratio.

6 Second, even if they're not asking for the Oversight
7 Board to add in terms of a plan of adjustment to a settlement
8 as to who owns the sales and use taxes, they might come up
9 with a -- with some other scheme of settlement that might or
10 might not be compatible with the fiscal plan and the
11 satisfaction of the Oversight Board's statutory missions.

12 And if that's the case, we would want to be able to
13 tell them, if we do this settlement, we can't succeed in our
14 mission, so please change it one way or the other.

15 Not to make it better or worse for one side or the
16 other, but simply to let the settlement be compatible with the
17 overall goals we're supposed to achieve. That is the only
18 reason why we put it there.

19 And frankly, you know, that could be resolvable, you
20 know. Perhaps members of the mediation team could be the
21 monitors as to whether we're appropriately exercising some
22 influence on the settlement for that reason.

23 We just need a settlement. We can't afford to have a
24 settlement that makes it impossible to succeed in the overall
25 mission of PROMESA. That was the only reason we did.

1 As far as the concern that was voiced that we would
2 nix something simply if it were very much in favor of COFINA,
3 absolutely not.

4 The Oversight Board acts as representative of COFINA
5 in the COFINA case, and its duties would preclude it from
6 doing that. And it knows that. And similarly on the
7 Commonwealth side.

8 And as far as the comment that was made that the
9 fiscal plans raids COFINA, that's just not true. The fiscal
10 plan shows the expenses that need to be paid for the overall
11 Commonwealth and the amount available for debt service. And
12 it's only going to be done under a plan of adjustment legally.
13 No one's going to take money in violation of PROMESA from one
14 entity and put it in another in some kind of raid.

15 That was never our intent. We never said that. I
16 understand that advocates are trying to attack us by saying
17 that's how they read it, but it doesn't say that, and that
18 is -- there's no way the Oversight Board would ever do that.

19 As far as the issue of adequate protection that's
20 been raised, Your Honor, this is not an issue of adequate
21 protection. This is an issue of determining what's to be --
22 what is the collateral in the first place, not adequately
23 protecting the collateral.

24 The secured creditors at COFINA are just that,
25 they're secured by whatever COFINA has. This dispute is what

1 does COFINA have, not how it's going to be protected.

2 The reason why the Oversight Board was going to
3 select the agents was it's the Oversight Board's agents. We
4 are not in PROMESA anywhere expressly. It says you can give
5 away your duties in prosecuting these cases and coming up with
6 plan adjustment to other people.

7 They're our agents. And we were trying to protect
8 against the notion that we would abuse that by choosing agents
9 beyond reproach. I think a statutory committee is one way and
10 selections from creditors is another way. How could -- how
11 could we be abusing that if we're taking selections from the
12 creditors? It's impossible.

13 And, you know, we know that if people are concerned
14 about how the settlement finally gets done that is presented
15 to the Court, there's a concept of heightened scrutiny that if
16 the Oversight Board has told the sides, you know, your
17 settlement doesn't work, but you have to change it for the
18 following reasons, the Court can impose heightened scrutiny on
19 whether it wants to approve that settlement.

20 We're only going to do something to enable the
21 mission of PROMESA to be carried out, and we need to be able
22 to do that. But there are those protections because of the
23 Court process that will make sure that's the only objective
24 that the Oversight Board was trying to carry out.

25 As far as the November 1 deadline, we explained that

1 | there are two reasons for that deadline. The first is as is
2 | crystal clear, and I think to everyone in the courtroom, this
3 | is a gating issue.

4 | It is impossible to do a plan of adjustment for
5 | COFINA or for the Commonwealth without knowing what assets are
6 | available to be distributed. And this is 55 percent of the
7 | bond debt.

8 | November 1 is a reasonable date to try to accomplish
9 | that goal, regardless of cash flow problems. When we filed
10 | the motion, the cash projections we had from the Commonwealth
11 | were that they would have negative cash by the end of
12 | November. A small positive balance at the beginning, negative
13 | by the end. That's why we said November 1.

14 | As we explained in our reply, this 853 million
15 | dollars Your Honor has heard about is not all good news. Some
16 | of it is just not paying payables, accelerated collections,
17 | others things. On balance, they're probably better off. And
18 | maybe the date for a squeeze on cash is later, and we're happy
19 | when there's solid data to keep the Court advised. But even
20 | if the date is later, we still think everyone should try to
21 | get this done by November 1.

22 | Your Honor, at the first hearing we had, made a big
23 | point about the fact that this should be done as expeditiously
24 | as possible for the people of Puerto Rico and for all kinds of
25 | other reasons. And we think that is actually reason enough to

1 pick a date.

2 If November 1 bothers the Court or other parties,
3 then let's say let's pick something as quick and as practical.
4 And as Your Honor noted before, if there's a cash need, we
5 will try to resolve that need by borrowing.

6 We have not admitted that by seeking to have agents,
7 the Oversight Board is conflicted. The Oversight Board is
8 given a statutory role. It's not a lot different from the
9 holding company of a large Chapter 11 corporation with a lot
10 of subsidiaries and affiliates. The same management
11 represents all of them as Chapter 11 debtors.

12 Here, we are less conflicted than the Chapter 11
13 situation, if conflicted at all, which we don't think we are,
14 because we're not for profit. We're not trying to get
15 something for the Board as a whole, as an entity. It's just a
16 judicial, Congressional negotiation.

17 It's not for profit. It's just trying to do the
18 right thing. And it knows how to carry out its duties as
19 representative of different entities.

20 The reason that we opted for the general creditors
21 committee as opposed to the retirees committee is that the
22 fiscal plan says that on average, we think that the retirees
23 need to be paid 90 percent of their pensions. That was for
24 lots of reasons.

25 A lot of them are not eligible for Social Security.

1 A lot of them will barely be at the poverty level with that
2 payout. They are on the island and they spend money on the
3 island. There are all kinds of reasons for that. But given
4 that the goal is 90 percent on average, we didn't think people
5 who were starting out with 90 cents in their pocket would be
6 looked at as being as aggressive as a committee that is
7 representing creditors who are faced with potentially far less
8 than that.

9 We have the greatest respect, sympathy and admiration
10 for the retirees and their committee and their professionals.
11 Just for those reasons, we thought choosing between the two
12 committees, the more general committee was the appropriate,
13 with the more appropriate agent.

14 I guess it's obvious that we disagree with FGAC that
15 the issue is not property ownership. It is property
16 ownership.

17 I hope I've answered Your Honor's questions about the
18 relationship between the agent and the Oversight Board in
19 explaining the only situations we would really want to impose
20 ourselves on settlement. And we could perhaps, as I
21 mentioned, use the mediation judges or one of them or whatever
22 to help in that degree.

23 THE COURT: And are you bound by the litigation
24 positions that are -- is it the intention to give the COFINA
25 agent a core brief that says, you know, you must litigate to

1 the death the question of COFINA ownership of the SUT revenues
2 and to frame a particular question?

3 Right now the proposal that you gave me says, you
4 know, there are these issues and there'll be one champion,
5 there'll be another champion. And it's very vague. And it's
6 not clear to me that the -- at least the debtors, at the end
7 of the day, need to own certain legal positions.

8 The ultimate plan of adjustment may propose to
9 compromise those legal positions for other reasons, but I need
10 to see the debtor's position that's going to be litigated
11 before me.

12 MR. BIENENSTOCK: Okay. The issue that we intended
13 to put in each agent's hand and which we think our citations
14 to Credit Lyonnais were designed to support really what Your
15 Honor said. The COFINA agent is supposed to maximize sales
16 and use taxes, being the property of COFINA. The Commonwealth
17 agent is supposed to maximize sales and use taxes being
18 property of the Commonwealth, and they're supposed to litigate
19 that issue simultaneously with efforts to settle as part of
20 the -- and they should use the mediation team to try to
21 settle. But they should be doing both simultaneously.

22 THE COURT: Given the time, I don't want to belabor
23 this, but I can perceive, and I perceive in the fiscal plan
24 the potential for a determination that on the settlement side,
25 maximizing the ultimate benefit of, you know, COFINA

1 bondholders, for instance, might be tied up in the notion that
2 Puerto Rico needs to be healthy in the out years and not
3 solely a question of the ability to grab everything that's on
4 the table now under a lien. And so those could be different
5 positions depending on the context.

6 So, yeah, I am going to give it all back to you to
7 reformulate, but that's the best I can do to articulate that
8 concern.

9 MR. BIENENSTOCK: That's a very interesting concern,
10 if I understood correctly. Your Honor was suggesting that if
11 COFINA could have it all, is that really in its interest if it
12 would so impair the Commonwealth that there wouldn't be as
13 much sales and use tax in the future because the economy would
14 be so injured. We would totally leave that up to the agent.
15 As far as we're concerned --

16 THE COURT: But would you permit the agent's decline
17 to litigate vigorously the proposition that COFINA is entitled
18 to everything, or do you want this agent to litigate
19 vigorously that proposition so that it's from a point of
20 knowledge, leverage, power, or lack thereof that COFINA then
21 makes its decision as to what the plan of adjustment should
22 look like? That's the distinction I'm trying to make.

23 MR. BIENENSTOCK: I think we would want the COFINA
24 agent to litigate to the death what they believe is in the
25 best interest of COFINA. That may take into account what I

1 think Your Honor just articulated, and I think I just did, but
2 we wouldn't tell it what's in the best interest. We leave
3 that completely up to them.

4 Really, as I explained at the outset, our only desire
5 to have influence on the settlement is if someone comes up
6 with something that just doesn't work. And work -- when I say
7 work, I mean from the viewpoint of we wouldn't be able to have
8 plans of adjustment that would enable the mission of PROMESA
9 to get fiscal responsibility and access to capital markets if
10 that settlement were -- that was the only motivation for that.

11 And finally, we explained partly so, I wouldn't do it
12 here in any length, in our status report, what we called the
13 recurring issue on the fiscal plan. We totally get all the
14 creditors would like us to say there's more available to go to
15 them. We wish there were.

16 We're working every day. The Board tries to come up
17 with things to improve the prospects of the Commonwealth. But
18 Congress put some pretty extraordinary things into PROMESA.
19 So unlike in Chapter 11, where if it doesn't work, you go to
20 Chapter 22 or 33, and it's not the end of the world
21 necessarily, but Congress clearly said here it wants it done
22 once right, and it doesn't want the Oversight Board subject
23 being jawboned and saying look, you'll have other revenues and
24 make everyone happy. That's a very, very serious issue. I'm
25 sure, you know, the mediation team and Your Honor -- it will

1 speed up the litigation already. Your Honor is going to hear
2 it, and the mediation team is going to hear it, but I can't
3 emphasize enough what a critical, important issue that is.
4 And that's just so we can carry out the mission we're supposed
5 to carry out.

6 So Your Honor, I will reach out, the Oversight Board
7 will reach out to the mediation team. But I'd like to know,
8 can we -- it's hard to get anonymity in this crowd.

9 Based on if we get something that we think is as good
10 as we can do, but it's not unanimous, I'd like to know that
11 the Oversight Board, on a prompt timetable, can bring it back
12 to the Court, because this really has to get done for the
13 reasons I mentioned.

14 THE COURT: Yes. The motion practice can be renewed.
15 I am asking you to try to make it unanimous and certainly make
16 it responsive to my concerns and the sorts of concerns that
17 have been raised here.

18 But if it's not unanimous, then cue up a motion with
19 a suggested timetable that doesn't necessarily coincide with
20 an Omni. And there'll be an opportunity to file opposition
21 papers, and we'll go from there.

22 MR. BIENENSTOCK: All right. Thank you.

23 MR. RAPISARDI: Your Honor, may I be heard?

24 THE COURT: Mr. Rapisardi, yes.

25 MR. RAPISARDI: John Rapisardi on behalf of AAFAF.

1 Your Honor, we filed papers in support of the
2 Oversight Board's motion. And in just listening to the
3 dialogue, what convinced the government to go along with the
4 Oversight Board's motion was not that it was premised upon the
5 concept of conflicts, but they were endeavoring to create not
6 only a transparency to allow the parties access to a
7 litigation strategy pursued by the COFINA side and both the
8 Commonwealth side, the government was, at the outset,
9 concerned about yet another line of -- lawyers being lined up,
10 one representing the agent for COFINA, one representing the
11 agent for the Commonwealth, and a potential for the litigation
12 spinning out of control.

13 What gave us comfort was the Board retaining control
14 over the process in terms of if the litigation reaches
15 impasse. And I think that's why I think the mediation will be
16 very helpful, that the Board could still intervene, and
17 consistent with your observations, Your Honor, with respect to
18 Section 104, it does -- the Board may designate its agent
19 within the section. And under those provisions under 104,
20 they are more mechanical in nature.

21 I don't believe the Board can just carte blanche
22 delegate power that goes to the heart of PROMESA, for example,
23 proposing a plan or proposing a settlement -- I'm sorry,
24 ceding to the agents or otherwise and propose a settlement
25 that's inconsistent with the fiscal plan that is certified.

1 So the government does have concerns that if the
2 Board somehow grants these agents power or authority to
3 litigate endlessly without any road to breaking the impasse --
4 and it was Your Honor who threw out there the idea that there
5 should be a parallel plan process where working through a
6 mediation process, that there's a straw-man plan on the table
7 that advises the parties of their down side risk.

8 We heard now for over a month each of the
9 constituencies talking about that they're statutory
10 lienholders and they're special revenue bondholders. Well,
11 there's a countervailing view that they are not statutory
12 lienholders. They are not special revenue bondholders. They
13 are just ordinary creditors whose rights in Section 552 with
14 respect to future sales and use taxes are cut off.

15 I'm not arguing that point, but that is a real
16 possibility that could be presented under a plan of
17 adjustment, given the COFINAs, or on the other side, the GOs,
18 who assert they have a statutory lien to available resources.

19 Well, there are some really good case laws, including
20 an article written by a member on the Oversight Board which
21 suggests that they may not have a lien, and so they're an
22 ordinary general unsecured creditor.

23 Everyone in this room is an experienced lawyer, and
24 they know what the power of cramdown has and what it can do.
25 And what I would suggest is that during the mediation process,

1 that we have a plan in process so the parties are negotiating
2 PROMESA, because up until now, we saw the Lex Claims
3 litigation go forward, that didn't bring parties to
4 settlement.

5 The rationale, even for this motion, was, you know,
6 I'd asked originally what would drive the parties to settle,
7 and the answer is, well, fear of losing.

8 Your Honor, the parties in this entire matter, each
9 of the constituencies have had a winner-take-all mentality.
10 And I think that's going to be very important in terms of
11 breaking through that. In the original mediation that we had
12 in March, that's a problem we confronted.

13 The GOs are very -- you know, represented by very
14 capable counsel. COFINA's represented by very capable
15 counsel. And they believe very strongly in their positions.
16 And that's going to be a challenge for the mediation, Your
17 Honor.

18 And I believe there has to be some thread of
19 influence that brings parties together that strikes real fear
20 into them that if they don't at some point come to a consensus
21 and they continue to litigate the impasse, that the Board will
22 move forward with its own plan.

23 The Board has an exclusive right and discretion to
24 file a plan of adjustment, and its hands should not be tied by
25 any settlement or agreement where agents are running off

1 pursuing a course of action that's contrary to what's
2 contained in PROMESA.

3 Thank you, Your Honor.

4 THE COURT: Thank you. We will now break for 45
5 minutes. I hope that at least some of you can find some lunch
6 here. We will resume at 1:30. And on the ERS lift of stay
7 motion, I'll hear opponents first.

8 Thank you. We are adjourned.

9 All rise.

10 (At 12:41 PM, recess taken.)

11 (At 1:34 PM, proceedings reconvened.)

12 THE COURT: So just for clarity, the ruling on the
13 final motion of the morning, which was the GO COFINA
14 procedures motion, is that the motion is denied without
15 prejudice to renewal with a reformulated proposal addressing
16 the issues that were raised, and I expect that there will be
17 work with the mediators in aid of the reformulation of the
18 proposal.

19 And one logistical issue, it appears that people in
20 the remote rooms are having some difficulty hearing the people
21 who speak from the podium. And so Counsel, as you come to the
22 podium, please make sure that the microphone is pointing
23 toward your mouth and project as if you were at the opera, and
24 then the people in the remote locations and on the telephone
25 should be able to hear more clearly. And I thank you for that

1 on my behalf and theirs.

2 (Proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 126 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain on June 28,
8 2017.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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